



















1935

- Mar. 18—Motion for 20 days continuance filed by taxpayer. 3/19/35 granted and continued to 4/17/35.
- Apr. 8—Motion for 20 days continuance filed by taxpayer. 4/10/35 granted and continued to 5/1/35.
- Apr. 30—Motion for a continuance filed by taxpayer.
- May 1—Hearing had before Mr. Black (Leech) on settlement under Rule 50. Petitioner's motion to continue granted to May 29, 1935.
- “ 1—Motion for continuance filed 4/30/35 by taxpayer granted and continued to 5/29/35.
- “ 20—Motion for reconsideration and rehearing filed by taxpayer.
- “ 20—Motion for continuance on Rule 50 and on motion for rehearing to 6/14/35 filed by taxpayer.
- “ 22—Motion for continuance on Rule 50 and on motion for rehearing to 6/14/35 granted.
- “ 22—Hearing set 6/14/35 on motion.
- “ 23—Copy of notice of hearing date and motion served on General Counsel.
- Jun. 17—Hearing had before Mr. Leech on motion of petitioner for reconsideration and rehearing. C.A.V. Memorandum of authorities filed. Briefs none. [1\*]

1935

- Jun. 29—Transcript of hearing of June 17, 1935 filed.
- Jul. 9—Memorandum and order that petitioner's motion for rehearing be denied entered.
- “ 11—Notice of hearing on July 24, 1935, on settlement under Rule 50.
- “ 24—Hearing had before Mr. Trammell on settlement under Rule 50. Referred to Mr. Leech for decision. (Not contested.)
- “ 29—Decision entered, J. Russell Leech, Div. 6.
- Oct. 18—Stipulation of venue filed.
- “ 18—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.
- “ 18—Proof of service filed.
- Dec. 5—Motion for extension of 30 days from 12/27/35 to complete record filed by taxpayer.
- “ 5—Order enlarging time to 1/27/36 for preparation of evidence and delivery of record entered.

1936

- Jan. 8—Motion for extension of 30 days to transmit record filed by taxpayer.
- “ 8—Order enlarging time to 2/25/36 for preparation of evidence and delivery of record entered.
- “ 8—Praecipe with proof of service thereon filed. [2]

APPEARANCES

For Taxpayer:

CLAUDE I. PARKER, Esq.,  
RALPH W. SMITH, Esq.,  
L. A. LUCE, Esq.

For Comm'r.:

THOMAS M. MATHER, Esq.,  
WALTER W. KERR, Esq.

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Docket No. 66584.

DOUGLAS L. EDMONDS, Administrator de bonis  
non of the Estate of Adina Mitchell, Deceased,  
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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DOCKET ENTRIES.

1932

Jun. 13—Petition received and filed. Taxpayer notified. (Fee paid).

“ 13—Copy of petition served on General Counsel.

Aug. 11—Answer filed by General Counsel.

Sep. 20—Copy of answer served on taxpayer. Circuit Calendar.

1933

Jul. 11—Hearing set in Long Beach, Calif. beginning Sept. 11, 1933.

## 1933

- Jul. 29—Motion for leave to file amended answer filed by General Counsel. Amended answer lodged.
- Aug. 2—Motion for leave to file amended answer granted.
- Oct. 2—Hearing had before Mr. Leech (Heard by Van Fossan) on merits. Submitted. Assigned to Division #6, Mr. Leech. Stipulation of facts filed. Briefs due Dec. 1, 1933—no exchange.
- Dec. 1—Memorandum brief filed by General Counsel.
- “ 1—Motion for extension to Jan. 1, 1934 to file brief filed by taxpayer. Dec. 1, 1933 granted to both parties.
- “ 28—Motion for extension to Jan. 10, 1934 to file brief filed by taxpayer. 12/29/33 granted to both parties.

## 1934

- Jan. 10—Brief filed by taxpayer.
- Dec. 28—Opinion rendered, J. Russell Leech, Div. 6. Judgment will be entered under Rule 50.

## 1935

- Jan. 29—Notice of settlement filed by General Counsel.
- “ 31—Hearing set Feb. 20, 1935 on settlement.
- Feb. 18—Motion for 30 days continuance filed by taxpayer. 2/18/35 granted and continued to 3/20/35.

1935

- Mar. 18—Motion for 20 days continuance filed by taxpayer. 3/19/35 granted and continued to 4/17/35.
- Apr. 8—Motion for 20 days continuance filed by taxpayer. 4/10/35 granted and continued to 5/1/35.
- “ 30—Motion for a continuance filed by taxpayer.
- May 1—Hearing had before Mr. Black (Leech) on settlement under Rule 50. Petitioner's motion to continue—granted and continued to May 29, 1935.
- “ 1—Motion for a continuance filed 4/30/35 by taxpayer granted and continued to May 29, 1935.
- “ 20—Motion for reconsideration and rehearing filed by taxpayer. [3]
- “ 20—Motion for continuance to 6/14/35 on rule 50 and hearing on motion for rehearing filed by taxpayer. 5/22/35 granted.
- “ 22—Hearing set June 14, 1935 on motion
- “ 23—Copy of notice of hearing date and motion served on General Counsel.
- Jun. 17—Hearing had before Mr. Leech on motion of petitioner for reconsideration and rehearing. C.A.V. Memorandum of authorities filed.
- “ 29—Transcript of hearing of June 17, 1935 filed.
- Jul. 9—Memorandum and order that petitioner's motion for rehearing and reconsideration be denied entered.

1935

- Jul. 11—Notice of hearing on July 24, 1935 on settlement under Rule 50.
- “ 24—Hearing had before Mr. Trammell on settlement under Rule 50. Not contested—referred to Mr. Leech for decision.
- “ 29—Decision entered, J. Russell Leech, Div. 6.
- Oct. 18—Stipulation of venue filed.
- “ 18—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.
- “ 18—Proof of service filed by taxpayer.
- Dec. 5—Motion for extension of 30 days from 12/27/35 to complete record filed by taxpayer.
- “ 5—Order enlarging time to Jan. 27, 1936 for preparation of evidence and delivery of record entered.

1936

- Jan. 8—Motion for extension of 30 days to transmit record filed by taxpayer.
- “ 8—Order enlarging time to Feb. 25, 1936 for preparation of evidence and delivery of record entered.
- “ 8—Praecipe with proof of service thereon filed. [4]

APPEARANCES

For Taxpayer:

CLAUDE I. PARKER, Esq.,

RALPH W. SMITH, Esq.,

L. A. LUCE, Esq.,

RICHARD S. EDMOND, Esq.

For Comm'r.:

T. M. MATHER, Esq.,

WALTER W. KERR, Esq.

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Docket No. 70861.

DOUGLAS L. EDMONDS, Administrator de bonis  
non of the Estate of Adina Mitchell, Deceased,  
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

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DOCKET ENTRIES.

1933

Apr. 3—Petition received and filed. Taxpayer notified. (Fee paid).

“ 3—Copy of petition served on General Counsel.

May 31—Answer filed by General Counsel.

Jun. 8—Copy of answer served on taxpayer. Circuit Calendar (vicinity of Los Angeles, Calif.

1935

Jul. 14—Hearing at Long Beach, Calif. week of 9/11/33.

Oct. 2—Hearing had before Mr. Leech (heard by Mr. Van Fossan) on merits. Submitted. Assigned to Mr. Leech, Div. 6. Stipulation of facts filed. Briefs due 12/1/33—no exchange.

“ 16—Transcript of hearing of Oct. 2, 1933 filed.

Dec. 1—Memorandum brief filed by General Counsel.

“ 1—Motion for extension of time to file brief to 1/1/34 filed by taxpayer. 12/1/33 granted to both parties.

“ 28—Motion for extension to Jan. 10, 1934 to file brief filed by taxpayer. 12/29/33 granted to both parties.

1934

Jan. 10—Brief filed by taxpayer.

Dec. 28—Opinion rendered, J. Russell Leech. Judgment will be entered under Rule 50.

1935

Jan. 29—Notice of settlement filed by General Counsel.

“ 31—Hearing set Feb. 20, 1935 under Rule 50.

Feb. 18—Motion for 30 days continuance filed by taxpayer. 2/18/35 granted and continued to 3/20/35.

Mar. 18—Motion for 20 days continuance filed by taxpayer. 3/19/35 granted and continued to 4/17/35.



1935

- Apr. 8—Motion for 20 days continuance filed by taxpayer. 4/10/35 granted and continued to 5/1/35.
- “ 30—Motion for a continuance filed by taxpayer.
- May 1—Hearing had before Mr. Black (Leech) on settlement under Rule 50. Petitioner's motion to continue granted to May 29, 1935.
- “ 1—Motion for continuance filed 4/30/35 by taxpayer granted and continued to 5/29/35
- “ 20—Motion for reconsideration and rehearing filed by taxpayer.
- “ 20—Motion for continuance on Rule 50 and on motion for rehearing to 6/14/35 granted.
- “ 22—Hearing set 6/14/35 on motion. [5]
- “ 23—Copy of notice of hearing date and motion served on General Counsel.
- Jun. 17—Hearing had before Mr. Leech on motion of petitioner for reconsideration and rehearing. C.A.V. Memorandum of authorities filed. Briefs none.
- “ 29—Transcript of hearing of June 17, 1935 filed.
- Jul. 9—Memorandum and order that petitioner's motion for rehearing be denied entered.
- “ 11—Notice of hearing on July 24, 1935 on settlement under Rule 50.

1935

- Jul. 24—Hearing had before Mr. Trammell on settlement under Rule 50. Referred to Mr. Leech for decision—not contested.
- “ 29—Decision entered, J. Russell Leech, Div. 6.
- Oct. 18—Stipulation of venue filed.
- “ 18—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.
- “ 18—Proof of service filed by taxpayer.
- Dec. 5—Motion for extension of 30 days from 12/27/35 to complete record filed by taxpayer.
- Dec. 5—Order enlarging time to 1/27/36 for preparation of evidence and delivery of record entered.

1936

- Jan. 8—Motion for extension of 30 days to transmit record filed by taxpayer.
- “ 8—Order enlarging time to 2/25/36 for preparation of evidence and delivery of record entered.
- “ 8—Praecipe with proof of service thereon filed. [6]

United States Board of Tax Appeals.

Docket No. 47516.

ADINA MITCHELL, Executrix of the Estate of  
John W. Mitchell, Deceased,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

PETITION.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency, IT:AR:B-12. CGW-60D, dated December 20, 1929, and as a basis of her proceedings alleges as follows:

1. That John W. Mitchell died, a resident of the County of San Diego, State of California, on the 2nd day of July, 1925, and thereafter your petitioner was duly appointed Executrix of the estate of the said John W. Mitchell, deceased, and duly qualified as such Executrix and is still the duly appointed, qualified and acting executrix of the estate of said decedent.

2. That petitioner is a resident of the County of San Diego, State of California, receiving mail at 808 Bank of America Building, Los Angeles, California.

3. The notice of deficiency, a copy of which is hereto attached and marked Exhibit A, was mailed to the petitioner on December 20, 1929.

4. The taxes in controversy are income taxes for the period [7] of year 1924 and the period January 1 to July 2, 1925, and for \$17,013.76, the whole of said tax being in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) Respondent erred in determining the fair market value of the property sold by decedent as of March 1, 1913.

(b) Respondent erred in determining any deficiency whatever against said petitioner as petitioner is not responsible for any tax liability that might have been owing or accrued by reason of the sale of property by decedent during his life or upon the capital gain or income therefrom.

(c) Respondent erred in failing to allow as deductions the items so claimed in return filed by decedent, John W. Mitchell.

(d) Respondent erred in determining the amount of gross income and the net income of John W. Mitchell.

(e) Respondent erred in determining a deficiency and was without authority to issue a 60 day letter by reason of the fact that said assessment of a deficiency was barred by the statute of limitations in that the time within which the alleged defi-

ciency for the year 1925 may be assessed had expired.

6. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

John W. Mitchell died testate July 2, 1925; Adina Mitchell, his widow, petitioner herein, is the duly appointed, qualified and acting Executrix of his estate. Decedent prior to his death held title to property which was transferred to the Title Guarantee and Trust Company of Los Angeles, California, and thereafter formed Trusts No. 750, 807 and 822. [8]

As to Trust No. 750, decedent provided that one King C. Gillette should share equally with him in the net proceeds from the sales thereunder in return for monies advanced by said Gillette.

As to Trust No. 807 after the real property had been conveyed to the Title Guarantee and Trust Company thereunder, decedent authorized said Trustee to convey certain of the real property under said trust to the Los Angeles Stone Company, taking in return therefor certain monies and the promissory note of said corporation payable to decedent and secured by a Deed of Trust upon the land so conveyed.

As to Trust No. 822, after the conveyance of the real property to the Title Guarantee and Trust Company thereunder, decedent authorized said trustee to convey all of said real property to one F. A. Hartwell, taking in payment therefor certain monies

and two promissory notes executed by F. A. Hartwell, payable to the order of decedent and secured by Deeds of Trust to the property so conveyed.

That thereupon the said three promissory notes and Deeds of Trust securing same, were deposited with the Title Guarantee and Trust Company for collection and that the said Trustee has since collected the principal and interest accruing thereon and remitted same to decedent and after his death to the executrix of his estate.

After, however, the delivery of the said three promissory notes to John W. Mitchell, he caused to have his beneficial interest in said trusts to be assigned to himself and wife as joint tenants with right of survivorship. [9]

Petitioner avers that respondent erred in determining the March 1, 1913 value of the property in said trusts, and in this connection states that the March 1, 1913 value of the property embracing Trust No. 750 was \$245,400.00 plus improvements since that date of \$125,374.59, making a total cost of said property \$370,774.59. As to Trust No. 807, the fair market value as of March 1, 1913 of the property sold under said trust was \$150,000.00. As to Trust No. 822, the fair market value as of March 1, 1913 of the property sold under said trust was \$172,500.00.

WHEREFORE, petitioner prays that this Board may hear the proceedings and redetermine the tax

liability herein alleged, and by its judgment grant to said petitioner the relief herein asked.

CLAUDE I. PARKER  
RALPH W. SMITH

Counsel for Petitioner  
808 Bank of America Bldg.,  
Los Angeles, California. [10]

State of California  
County of Los Angeles—ss.

ADINA MITCHELL, being first duly sworn, says that she is the petitioner above named; that she has read the foregoing petition, or had the same read to her and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts she believes to be true.

ADINA MITCHELL

Subscribed and sworn to before me this 11th day of February, 1930.

[Seal] MYRTLE V. HITCHCOCK  
Notary Public, in and for the County of Los Angeles, State of California. My commission expires Mar. 31, 1933. [11]

## EXHIBIT "A".

TREASURY DEPARTMENT  
WASHINGTONOffice of  
Commissioner of Internal Revenue

Dec 20 1929

Mrs. Adina Mitchell, Executrix,  
Estate of John W. Mitchell, Deceased,  
1063 Ocean Boulevard,  
Coronado, California.

Madam:

In accordance with Section 274 of the Revenue Act of 1926, you are advised that the determination of your tax liability for the year 1924 and the period January 1 to July 2, 1925, discloses a deficiency of \$17,013.76, as shown in the statement attached.

The section of the law above mentioned allows you to petition the United States Board of Tax Appeals within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed Form 866 and forward both original and duplicate to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.



The signing of this agreement form will expedite the closing of your return by permitting an early assessment of any deficiencies and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the agreement form, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiencies.

Respectfully,

ROB'T H. LUCAS,

Commissioner

By DAVID BURNET

Deputy Commissioner.

Inclosures:

Statement

Form 866

Form 882 [12]

## STATEMENT.

IT:AR:B-12

CGW-60D

Dec. 20 1929

In re: Mrs. Adina Mitchell, Executrix,  
Estate of John W. Mitchell, Deceased,  
1063 Ocean Boulevard,  
Coronado, California.

## TAX LIABILITY.

Year	Corrected Tax Liability	Tax Previously Assessed	Deficiency
1924	\$ 7,860.14	\$2,117.15	\$ 5,742.99
Period January 1, to July 2, 1925	11,339.64	68.87	11,270.77
Totals	<u>\$19,199.78</u>	<u>\$2,186.02</u>	<u>\$17,013.76</u>

The report of the Internal Revenue Agent in Charge at San Francisco, California, has been reviewed and approved by this office.

Consents which will expire December 31, 1929, except as extended by the provisions of Section 277(b) of the Revenue Act of 1926, are on file for the years 1924 and 1925.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district, and remittance should then be made to him.

A copy of this letter has been mailed to your representative, Mr. Ralph W. Smith in accordance with the power of attorney executed by you and on file with the Bureau.

[Endorsed]: Filed Feb. 15, 1930. [13]

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[Title of Court and Cause—Docket #47516.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of this petitioner, admits and denies as follows:

1. Admits the allegations of paragraph 1 of the petition.

2. Admits the allegations of paragraph 2 of the petition.

3. Admits the allegations of paragraph 3 of the petition.

4. (a) to (e) Denies the allegations of error contained in subdivisions (a) to (e) inclusive of paragraph 4 of the petition.

5. Denies the allegations of fact contained in paragraph 5 of the petition.

6. Denies generally and specifically each and every allegation contained in the petitioner's petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal of the petitioner be denied.

C. M. CHAREST,  
General Counsel,  
Bureau of Internal Revenue.

Of Counsel,

JOHN D. KILEY,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: Filed Apr. 5, 1930. [14]

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United States Board of Tax Appeals.

Docket No. 66584.

DOUGLAS L. EDMONDS, Administrator de bonis  
non of the Estate of Adina Mitchell, Deceased,  
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE.  
Respondent.

PETITION.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:E-1 RCC-60D) dated April 16, 1932, and as a basis of his proceedings alleges as follows:

1. That Adina Mitchell died, a resident of the County of San Diego, State of California, on the 20th day of April, 1931, and thereafter your petitioner was duly appointed Administrator De Bonis Non of the estate of said Adina Mitchell, and duly qualified as such Administrator, and is still the duly appointed, qualified and acting Administrator of the estate of said decedent.

2. That petitioner is a resident of the County of Los Angeles, State of California, receiving mail at [15] 808 Bank of America Building, Los Angeles, California.

3. That the notice of deficiency (a copy of which is attached and marked EXHIBIT A) was dated April 16, 1932, and presumably mailed as of that date.

4. The taxes in controversy are income taxes on Adina Mitchell, deceased, for the period July 2nd to December 31, 1925, and for the years 1926, 1927 and 1928, and the controversy must be determined under the revenue acts applicable thereto; and as determined by the Commissioner, the deficiency tax liability is in the sum of \$17,939.95 and penalty of \$4,484.98, all of which sums are in controversy here, the petitioner denying any liability for tax.

5. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

1. That the income determined by respondent as taxable against Adina Mitchell, deceased, was re-

ceived by her by gift, descent or devise from the estate of her deceased husband, John W. Mitchell.

2. That the income determined against petitioner in said EXHIBIT A was not her income but was the income of the Estate of John W. Mitchell, deceased, and was received by the estate of said decedent and not by said Adina Mitchell.

3. That the said income set forth in said EXHIBIT A was not income but was a return of capital.

4. That any profits realized through the sale of the property set forth in EXHIBIT A were returned and a tax paid thereon by the said John W. Mitchell or by [16] his estate.

5. That the property from which the alleged income was realized, as set forth in said EXHIBIT A, was not at any time joint tenancy property but title thereto stood at all times in the name of John W. Mitchell.

6. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

1. Prior to April 1, 1924, title to certain real property stood in the name of a banking institution in Los Angeles, California, and was then conveyed by it to Title Guarantee and Trust Company, a corporation, of Los Angeles, which executed two revocable Declarations of Trust reciting that title was held in the name of John W. Mitchell. Thereafter, and prior to April 1, 1924, Mr. Mitchell sold most of the property and received therefor three

promissory notes secured by deeds of trust. These notes were all payable to John W. Mitchell, who deposited them with Title Guarantee and Trust Company as security for advances made and to be thereafter made by it to him. These notes were never held by said Trustee under its Declarations of Trust, but at all times since the date of their execution and delivery were held by it as collateral security for loans, which are in part yet unpaid.

2. The income which the Government is attempting to tax in these proceedings is income derived from payments on the principal of these promissory notes, all of which was either paid to John W. Mitchell prior to July 2, [17] 1925, the date of his death, or thereafter to his estate.

3. That on April 1, 1924, John W. Mitchell and Adina Mitchell, his wife, executed a certain instrument which recited that all of the properties held by Title Guarantee and Trust Company as trustee should be held in trust for John W. Mitchell and Adina Mitchell, his wife, as joint tenants; but that at the date of the execution of said instrument the only property which Title Guarantee and Trust Company held under the said Declarations of Trust theretofore made was a small portion of the real estate originally conveyed, practically all of which is still held by said company as trustee. That said instrument did not affect the notes from which the income set forth in EXHIBIT A was realized. Further, said agreement, in so far as it attempts

to create an estate in joint tenancy, petitioner avers is void.

WHEREFORE, petitioner prays that this Honorable Board may hear and redetermine the tax liability herein alleged, and by its judgment grant to said petitioner the relief herein asked.

CLAUDE I. PARKER

937 Munsey Bldg.,

Washington, D. C.

and

RALPH W. SMITH

Attorneys for Petitioner

808 Bank of America Building

Los Angeles, California.

L. A. LUCE

937 Munsey Building

Washington, D. C.

Of Counsel. [18]

State of California

County of Los Angeles—ss.

DOUGLAS L. EDMONDS, hereby duly sworn, says that he is the Administrator de bonis non of the Estate of Adina Mitchell, deceased, and the petitioner above named; that he has read the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

DOUGLAS L. EDMONDS



Subscribed and sworn to before me this 8th day of June, 1932.

[Seal]

MARGUERITE LE SAGE

Notary Public in and for the County of Los Angeles, State of California. [19]

EXHIBIT A.

TREASURY DEPARTMENT  
WASHINGTON

NP-2-26-28

April 16, 1932

Office of

Commissioner of Internal Revenue

Mrs. Adina Mitchell

c/o Claude I. Parker and Ralph W. Smith,

808 Bank of America Bldg.,

Los Angeles, California.

Madam:

You are advised that the determination of your tax liability for the period July 2 to December 31, 1925 and years 1926, 1927 and 1928, discloses a deficiency of \$17,939.95 and penalty of \$4,484.98 as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926 and section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of

your tax liability for the years in which a deficiency is disclosed.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your returns by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; WHEREAS IF NO AGREEMENT IS FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,  
DAVID BURNET,

Commissioner.

By (Signed) J. C. WILMER,  
Deputy Commissioner.

Enclosures:

Statement

Form 882

Form 870 [20]

## STATEMENT.

IT:AR:E-1

RCC-60D

In re: Mrs. Adina Mitchell,  
 c/o Claude I. Parker and  
 Ralph W. Smith,  
 808 Bank of America Bldg.,  
 Los Angeles, California.

## TAX LIABILITY.

Years	Tax Liability	Tax Assessed	Deficiency	Penalty
Period July 2, to Dec. 31,				
1925	\$ 5,669.58	None	\$ 5,669.58	\$1,417.39
1926	4,095.80	None	4,095.80	1,023.95
1927	3,623.49	None	3,623.49	905.87
1928	4,551.08	None	4,551.08	1,137.77
Totals	\$17,939.95	None	\$17,939.95	\$4,484.98

Further reference is made to the reports of the internal revenue agent in charge at Los Angeles, California, covering your tax liability for the above-mentioned years, to protests filed with that official and conference held with your representative on August 18, 1930.

The deficiency arises through the treatment of the entire income realized from Trust #822B as your separate income taxable to you instead of treating the income in part as taxable to the estate of your deceased husband.

This office has given careful consideration to your protest and information submitted at the conference, but since it appears from declaration of Trust Agreement 822B that the trust created a joint tenancy, with right of survivorship in all the F. A. Hartwell notes and two trust deeds as well as all the assets of Trusts #750, #807 and #822, you became sole beneficiary of the trusts and the Hartwell notes by your right of survivorship in the joint tenancy created by Trust #822B. All of the income from Trust #822B is, therefore, held to be taxable to you.

Period July 2, to December 31, 1925	
Net income from Trust #822B	\$52,724.82
Less:	
Personal exemption	1,500.00
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Balance subject to normal tax	\$51,224.82
	[21]
Normal tax at 1½% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$43,224.82	2,161.24
Surtax on \$52,724.82	3,341.47
	<hr/>
Total tax	\$ 5,682.71
Less:	
25% earned income credit	13.13
	<hr/>
Corrected tax liability	\$ 5,669.58
25% penalty	1,417.39
	<hr/>
Total tax and penalty	\$ 7,086.97
Tax previously assessed	None
	<hr/>

## 1926

Net income from Trust #822B	\$43,774.55
Less:	
Personal exemption	1,500.00
	<hr/>
Balance subject to normal tax	\$42,274.55
Normal tax at 1½% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$34,274.55	1,713.73
Surtax on \$43,774.55	2,215.20
	<hr/>
Total tax	\$ 4,108.93
Less:	
25% earned income credit	13.13
	<hr/>
Corrected tax liability	\$ 4,095.80
25% penalty	1,023.95
	<hr/>
Total tax and penalty	\$ 5,119.75
Tax previously assessed	None
	<hr/>
Deficiency in tax	\$ 5,119.75

## 1927

Net income from Trust #822B	\$40,822.62
Less:	
Personal exemption	1,500.00
	<hr/>
Balance subject to normal tax	\$39,322.62
	[22]

Normal tax at 1½% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$31,322.62	1,566.13
Surtax on \$40,822.62	1,890.49
	<hr/>
Total tax	\$ 3,636.62
Less:	
25% earned income credit	13.13
	<hr/>
Corrected tax liability	\$ 3,623.49
25% penalty	905.87
	<hr/>
Total tax and penalty	\$ 4,529.36
Tax previously assessed	None
	<hr/>
Deficiency in tax	\$ 4,529.36
	1928
Net income from Trust #822B	\$46,465.92
Less:	
Personal exemption	1,500.00
	<hr/>
Balance subject to normal tax	\$44,965.92
Normal tax at 1½% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$36,965.92	1,848.30
Surtax on \$46,465.92	2,535.91
	<hr/>
Total tax	\$ 4,564.21

Less:	
earned income credit	13.13
	<hr/>
Corrected tax liability	\$ 4,551.08
25% penalty	1,137.77
	<hr/>
Total tax and penalty	\$ 5,688.85
Tax previously assessed	None
	<hr/>
Deficiency in tax	\$ 5,688.85

Earned income credit has been computed on earned income of \$5,000.00 for all years.

The penalty of 25% shown herein is asserted under the provisions of section 3176 of the Revised Statutes.

[Endorsed]: Filed June 13, 1932. [23]

—————

[Title of Court and Cause.—Docket 66584.]

### ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of this petitioner, admits and denies as follows:

1, to 4. Admits the allegations of paragraphs 1 to 4 inclusive, of the petition.

5. (1) to (5) Denies the allegations of error contained in subdivisions (1) to (5) inclusive, of paragraph 5 of the petition.

6. (1) to (3) Denies the allegations of fact contained in subdivisions (1) to (3) inclusive, of paragraph 6 of the petition.

7. Denies generally and specifically each and every allegation contained in the petitioner's petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal of the petitioner be denied.

C. M. CHAREST,  
General Counsel,  
Bureau of Internal Revenue.

Of Counsel:

JOHN D. KILEY,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: Filed Aug. 11, 1932. [24]

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[Title of Court and Cause—Docket 66584.]

AMENDED ANSWER.

Comes now the Commissioner of Internal Revenue, by his attorney, E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and for amended answer to the petition of this petitioner, admits, denies and alleges as follows:

1 to 3. Admits the allegations of paragraphs 1 to 3 inclusive of the petition.

4. Admits the allegations in paragraph 4 of the petition except the allegations with respect to the year 1926, which the respondent alleges should include income received by the petitioner from Trust



#807, Title Guarantee and Trust Company, Trustee, in the amount of \$11,121.50.

5. Denies that the Commissioner erred in the determination of said deficiency as alleged in subdivisions (1) to (5) inclusive of paragraph 5 of the petition and alleges that the Commissioner erred by not including in the petitioner's income for the year 1926 the sum of \$11,121.50, the amount of income received by the petitioner from Trust #807.

[25]

6. Denies the allegations of fact contained in subdivisions (1) to (3) inclusive of paragraph 6 of the petition.

Denies generally and specifically each and every allegation contained in the petitioner's petition not hereinbefore admitted, qualified or denied.

1. For further and affirmative defense the respondent alleges that in 1922 John W. Mitchell transferred various parcels of real estate to the Title Guaranty and Trust Company, which issued three declarations of trust specifying the interest of John W. Mitchell in such property. These declarations of trust were designated as Nos. 750, 807 and 822.

2. Mrs. Adina Mitchell, the petitioner herein, was the widow of John W. Mitchell who died on July 2, 1925.

3. On April 1, 1924 the Title Guarantee and Trust Company, at the request of John W. Mitchell and Adina Mitchell, issued a new declaration of trust under #822B in which it declared that the interest in Trust #750, #807 and #822 were held

by it for John W. Mitchell and Adina Mitchell as joint tenants with right of survivorship.

4. At the time the various properties belonging to John W. Mitchell and/or Adina Mitchell were transferred to the Title Guarantee and Trust Company in 1922, John W. Mitchell had arranged the sale of 1500 feet of beach frontage in Santa Monica to F. E. Bundy and associates for \$150,000 of which \$25,000 was paid in cash and a note for \$125,000 given for the balance.

5. The Title Guarantee and Trust Company issued its declaration of Trust #807 in which John W. Mitchell was designated as seller and entitled to receive the sum of \$125,000 out of payments made by sub- [26] sequent lot purchasers.

6. The trustee of Trust #807 collected all amounts paid by the lot purchasers and a portion of each payment was credited on its books to John W. Mitchell as payment on the purchase note for \$125,000. \$22,243.00 was collected and credited to the account of John W. Mitchell in the year 1926.

7. In the returns filed by John W. Mitchell, deceased, during his lifetime no income was reported as received through Trust #807 or from the sale of land to that trust. On April 1, 1924 Mrs. Adina Mitchell acquired a joint interest in the note for \$125,000 by the declaration of Trust #822B and entitled to 50% of the profit realized from subsequent collections.

8. At the date of death of John W. Mitchell, July 2, 1925, Mrs. Adina Mitchell became sole

owner of the note in question by right of survivorship and entitled to the entire income derived from subsequent collections.

9. That for the year 1926, in determining the deficiency in income, the Commissioner failed to include in petitioner's income any profit derived from collections received by the petitioner from said \$125,000 note.

10. Petitioner having received during the year 1926 collections from said note in the amount of \$22,243.00, 50% of which represents realized profit, the petitioner's income for 1926 should be increased by the amount of \$11,121.50.

WHEREFORE, it is prayed that the Board re-determine the amounts of deficiencies involved in this proceeding to be equal to the respec- [27] tive amounts determined by the Commissioner plus such additional amount as may arise from the correction of the error alleged for the year 1926 committed by the Commissioner. Claim is hereby asserted for the increased deficiency resulting from such re-determination.

E. BARRETT PRETTYMAN  
General Counsel,  
Bureau of Internal Revenue.

Of Counsel:

T. M. MATHER,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed] Lodged Jul. 29, 1933. Filed Aug.  
2, 1933. [28]

[Title of Court and Cause—Docket No. 66584.]

REPLY.

Comes now the petitioner by his attorneys, Claude I. Parker and Ralph W. Smith, and for reply to the amended answer of respondent herein admits, denies and alleges as follows:

4. Replying to paragraph 4 on page 1 of said amended answer, denies that the year 1926 should include income received by petitioner from Trust No. 807, Title Guarantee and Trust Company, trustee, in the amount of \$11,121.50, or any amount, and denies that petitioner or petitioner's decedent received income from said trust 807 in the amount of \$11,121.50, or in any amount, in the year 1926.

5. Replying to paragraph 5 on page 1 of said amended answer denies that the Commissioner erred by not including in petitioner's income for the year 1926 the sum of \$11,121.50, and denies that said amount or any amount of income was received by petitioner or petitioner's decedent from said trust 807.

1 - 2. Admits the allegations of paragraphs 1 and 2 on page 2 of said amended answer.

3. Replying to paragraph 3 on page 2 of said amended answer denies that on April 1, 1924, or at any time, Title Guarantee and [29] Trust Company at the request of John W. Mitchell and Adina Mitchell, or otherwise, issued a new declaration of trust under #822B, or otherwise, in which it is declared that the interest in trusts #750, #807

and #822 were held by it for John W. Mitchell and Adina Mitchell as joint tenants with the right of survivorship.

4. Replying to paragraph 4 on page 2 of said amended answer, alleges that petitioner does not have information sufficient to enable him to answer the allegations of said paragraph 4 but believes said allegations to be untrue and petitioner therefore denies generally and specifically each and every allegation contained in said paragraph 4.

5. Replying to paragraph 5 on pages 2 and 3 of said amended answer, denies that John W. Mitchell was entitled to receive the sum of \$125,000.00, or any sum, out of payments made by subsequent lot purchases.

6. Replying to paragraph 6 on page 3 of said amended answer alleges that petitioner has no information sufficient to enable him to answer the allegations in said paragraph 6, but believes said allegations to be untrue and petitioner therefore denies generally and specifically each and every allegation contained in said paragraph 6.

7. Replying to paragraph 7 on page 3 of said amended answer, alleges that petitioner does not have information sufficient to enable him to answer the allegations in said paragraph 7 beginning with the words "in the return filed by John W. Mitchell" and ending with the words "or from the sale of land to that trust", but believes said allegations to be untrue and therefore denies generally and specifically each and every allegation in said

portion of said [30] paragraph 7. Further replying to said paragraph 7 denies that on April 1, 1924 Mrs. Adina Mitchell acquired a joint interest in the note for \$125,000.00, or any sum, by the declaration of trust #822B or otherwise, and/or was entitled to fifty per cent of the profits realized from subsequent collections.

8. Replying to paragraph 8 on page 3 of said amended answer, denies generally and specifically each and every allegation therein contained.

9. Replying to paragraph 9 on page 3 of said amended answer, denies that petitioner had or derived any income for the year 1926 from said note mentioned in said paragraph.

10. Replying to paragraph 10 on page 3 of said amended answer, denies generally and specifically each and every allegation therein contained.

11. Denies generally and specifically each and every allegation contained in respondent's said amended answer not hereinbefore qualified, admitted or denied.

WHEREFORE petitioner prays that this Honorable Board may hear and determine the tax liability herein involved and by its judgment determine that there is no deficiency in tax.

CLAUDE I. PARKER

RALPH W. SMITH

Counsel for Petitioner.

Of Counsel:

L. A. LUCE

937 Munsey Building,

Washington, D. C. [31]

United States of America  
State of California  
County of Los Angeles—ss.

DOUGLAS L. EDMONDS, being first duly sworn on his oath, deposes and says:

That he is the duly qualified, appointed and acting Administrator De Bonis Non of the Estate of Adina Mitchell, deceased, and the petitioner hereinabove named; that he has read the foregoing Reply to the Amended Answer of Respondent herein and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts to be upon information and belief, and those facts he believes to be true.

DOUGLAS L. EDMONDS

Subscribed and sworn to before me this 15th day of September, 1933.

[Seal] MARGUERITE LE SAGE  
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed at hearing Sep. 15, 1933. [32]

## United States Board of Tax Appeals

Docket No. 70861.

DOUGLAS L. EDMONDS, Administrator de bonis  
non of the Estate of Alina Mitchell, Deceased,  
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## PETITION.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:AR:E-1 AEF-60D) dated February 4, 1933. and as a basis of his proceeding alleges as follows:

1. That Adina Mitchell died, a resident of the County of San Diego, State of California, on the 20th day of April, 1931, and thereafter your petitioner was duly appointed Administrator De Bonis Non of the estate of said Adina Mitchell, and duly qualified as such Administrator, and is still the duly appointed, qualified and acting Administrator of the estate of said decedent. [33]

2. That petitioner is a resident of the County of Los Angeles, State of California, receiving mail at 808 Bank of America Building, Los Angeles, California.



3. That the notice of deficiency (a copy of which is attached and marked EXHIBIT A) was dated February 4, 1933, and presumably mailed as of that date.

4. The taxes in controversy are income taxes of Adina Mitchell, deceased, for the year 1925, and the controversy must be determined under the revenue acts applicable thereto; and as determined by the Commissioner the deficiency tax liability is in the sum of \$17,600.17 and penalty of \$4400.04, all of which sums are in controversy here, the petitioner denying any liability for tax or penalty.

5. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) That the income determined by respondent as taxable against Adina Mitchell, deceased, was received by her by gift, descent or device from the estate of her deceased husband, John W. Mitchell.

(b) That the income determined against petitioner in said EXHIBIT A was not her income but was the income of the Estate of John W. Mitchell, deceased, and was received by the estate of said decedent and not by said Adina Mitchell.

(c) That the said income set forth in said EXHIBIT A was not income but was a return of capital. [34]

(d) That any profits realized through the sale of the property set forth in EXHIBIT A were returned and a tax paid thereon by the said John W. Mitchell or by his estate.

(e) That the property from which the alleged income was realized, as set forth in said EXHIBIT A, was not at any time joint tenancy property but title thereto stood at all times in the name of John W. Mitchell.

(f) That the Commissioner is without authority to issue his sixty day letter, to wit, EXHIBIT A herein. That the period of limitation for assessment or collection of said tax has heretofore ceased and by reason of the limitations of Section 277 of the 1926 Revenue Act, any rights to assess or collect the tax which the respondent might at any time have had are barred.

6. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) Prior to April 1, 1924, title to certain real property stood in the name of a banking institution in Los Angeles, California, and was then conveyed by it to Title Guarantee and Trust Company, a corporation of Los Angeles, which executed two revocable Declarations of Trust reciting that title was held in the name of John W. Mitchell. Thereafter, and prior to April 1, 1924, Mr. Mitchell sold most of the property and received therefor three promissory notes secured by deeds of trust. These notes were all payable to John W. Mitchell, who deposited them with Title Guarantee and Trust Company as security for advances made and to be thereafter made by it to him. These notes were never held [35] by said Trustee under its

Declarations of Trust, but at all times since the date of their execution and delivery were held by it as collateral security for loans, which are in part yet unpaid.

(b) The income which the Government is attempting to tax in these proceedings is income derived from payments on the principal of these promissory notes, all of which was either paid to John W. Mitchell prior to July 2, 1925, the date of his death, or thereafter to his estate.

(c) That on April 1, 1924, John W. Mitchell and Adina Mitchell, his wife, executed a certain instrument which recited that all of the properties held by Title Guarantee and Trust Company as trustee should be held in trust for John W. Mitchell and Adina Mitchell, his wife, as joint tenants; but that at the date of the execution of said instrument the only property which Title Guarantee and Trust Company held under the said Declarations of Trust theretofore made was a small portion of the real estate originally conveyed, practically all of which is still held by said company as trustee. That said instrument did not affect the notes from which the income set forth in EXHIBIT A was realized. Further, said agreement, in so far as it attempts to create an estate in joint tenancy, petitioner avers is void.

WHEREFORE, petitioner prays that this Honorable Board may hear and redetermine the tax liability herein [36] alleged, and by its judgment grant

to said petitioner the relief herein asked.

CLAUDE I. PARKER

and

RALPH W. SMITH

Attorneys for Petitioner,  
808 Bank of America Building,  
Los Angeles, California.

Of Counsel:

L. A. LUCE, Esq.,  
937 Munsey Building,  
Washington, D. C. [37]

State of California

County of Los Angeles—ss.

DOUGLAS L. EDMONDS, hereby duly sworn, says that he is the Administrator de bonis non of the Estate of Adina Mitchell, deceased, and the petitioner above named; that he has read the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief and those facts he believes to be true.

DOUGLAS L. EDMONDS

Subscribed and sworn to before me this 29th day of March, 1933.

[Seal] MARGUERITE LE SAGE

Notary Public in and for the County of Los Angeles, State of California. [38]

EXHIBIT A.  
TREASURY DEPARTMENT  
WASHINGTON

Office of  
Commissioner of Internal  
Revenue

Address reply to

Commissioner of Internal  
Revenue and refer to

Feb 4 1933

IT:AR:E-1

AEF-60D

Estate of Adina Mitchell,

c/o Douglas L. Edmonds, Administrator,

808 Bank of America Building,

Los Angeles, California.

Sirs:

The determination of the income tax liability of Mrs. Adina Mitchell, deceased, for the year 1925, discloses a deficiency of \$17,600.17 and penalty of \$4,400.04.

In accordance with Section 274 of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the atten-

tion of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier; WHEREAS IF THIS FORM IS NOT FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,

Commissioner.

By W. T. SHERWOOD,

Acting Deputy Commissioner.

Enclosures:

Statement

Form 870 [39]

#### STATEMENT

Normal tax at 1½% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$95,493.20	4,774.66
Surtax on \$104,993.20	12,658.64
	<hr/>
Total income tax liability	\$17,613.30
Less:	
Credit for earned income	13.13
	<hr/>
Correct income tax liability	\$17,600.17
25% penalty	\$ 4,400.04

	Tax	Penalty
Correct liability	\$17,600.17	\$ 4,400.04
Previously assessed	None	None

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## Deficiency

(including the deficiency of \$7,086.97 shown in sixty-day letter dated April 16,

1932, but not yet assessed) \$17,600.17 \$ 4,400.04

The credit of earned income has been computed on the basis of \$5,000.00.

The penalty of 25% has been asserted under the provisions of Revised Statutes 3176. [40]

## STATEMENT

IT:AR:E-1

AEF-60D

In re: Estate of Adina Mitchell,  
c/o Douglas L. Edmonds, Administrator,  
808 Bank of America Building,  
Los Angeles, California.

## INCOME TAX LIABILITY

Year	Income Tax Liability	Income Tax Assessed	Deficiency	25% Penalty
1925	\$17,600.17	None	\$17,600.17	\$4,400.04

Information available to this office indicates that during the period January 1 to July 2, 1925, Mrs. Adina Mitchell was the owner of one-half of the

beneficial interest of Trusts 750, 807 and 822 and that after July 2, 1925 she was the sole owner by right of survivorship of the beneficial interest of Trusts 807 and 822, Trust 750 having been closed in April, 1925. The income from these trusts was received through Trust 822B.

Her income and tax liability for the calendar year 1925 have been determined as follows:

Net income from Trust 822—	
January 1 to July 2, 1925	\$52,724.82
Net income from Trust 822—	
July 3 to December 31, 1925	26,362.41
50% of profit on collections through	
Trust 807 from January 1 to July	
2, 1925	8,690.45
100% of realized collections through	
Trust 807 from July 3 to Decem-	
ber 31, 1925	10,683.33
50% of income from Trust 750,	
January 1 to July 2, 1925	6,532.19
	<hr/>
Correct net income	\$104,993.20

#### COMPUTATION OF TAX

Correct net income	\$104,993.20
Less:	
Personal exemption	1,500.00
	<hr/>
Balance subject to normal tax	\$103,493.20

[Endorsed]: Filed Apr. 3, 1933. [41]



[Title of Court and Cause—Docket No. 70861.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of this petitioner, admits and denies as follows:

1, 2, 3, & 4. Admits the allegations contained in paragraphs 1, 2, 3 and 4 of the petition.

5. (a) to (f) Denies the allegations of error contained in subdivisions (a) to (f) inclusive of paragraph 5 of the petition.

6. (a) to (c) Denies the allegations of fact contained in subdivisions (a) to (c) inclusive of paragraph 5 of the petition.

7. Denies generally and specifically each and every allegation contained in the petitioner's petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the appeal of the petitioner be denied.

(Signed) C. M. CHAREST

General Counsel,

Bureau of Internal Revenue.

Of Counsel:

JOHN D. KILEY,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: Filed May 31, 1933. [42]

[Title of Court and Cause—Docket Nos. 47516, 66584, 70861.]

### STIPULATION OF FACTS.

It is hereby stipulated and agreed by and between the parties hereto, through their respective counsel, that the above-entitled appeals may be consolidated for hearing and decision.

In the appeal of John W. Mitchell Estate, Adina Mitchell, executrix, Docket No. 47516, it is stipulated that Douglas L. Edmonds, as Administrator De Bonis Non may be substituted as party petitioner, Mrs. Adina Mitchell having died on April 20, 1931.

It is further stipulated and agreed that the deficiency due from the petitioner in Docket No. 47516 for the year 1924, is in the amount of \$4,048.04, and that the Board may enter its order of redetermination accordingly.

It is further stipulated that the said deficiency may be assessed and collected immediately after the issuance of the Board's order of redetermination without regard to the restrictions, if any, [43] contained in the Revenue Acts of 1926, 1928 and 1932.

It is further stipulated that the following facts may be considered as true:

Petitioner is the Administrator de Bonis non of the Estate of John W. Mitchell, deceased, who died on July 2, 1925, and is also the Executor of the Estate of Mrs. Adina Mitchell who died April 20, 1931.

John W. Mitchell and Adina Mitchell were married in Los Angeles in 1888, and John W. Mitchell practiced his profession as a lawyer in that city

until about 1921, when he retired. At the time of their marriage Mrs. Mitchell had as her separate property the sum of \$10,000.00 and subsequently inherited an additional sum of \$1,676.27. These funds were used to purchase land at Vermont Avenue and Beverly Boulevard, Los Angeles, California, title to which was taken in the name of Adina Mitchell. A home was erected on this property and it was occupied by Mr. and Mrs. Mitchell for many years.

During the period from 1888 to March 1, 1913 John W. Mitchell purchased and took title to two certain parcels of real estate in or near Los Angeles. The source of the funds used in paying for such properties is not known.

In 1915 the Los Angeles Trust and Savings Bank, which had made large loans to Mr. Mitchell, demanded additional security and there was deeded to that bank all of the real estate purchased by Mr. Mitchell and the home property on Vermont Avenue which had stood in the name of Mrs. Mitchell.

In 1921 John W. Mitchell arranged with King C. Gillette for a loan to pay off a portion of his indebtedness to the Pacific Southwest Savings Bank, formerly the Los Angeles Trust and Savings Bank [44] and to secure the loan from Mr. Gillette caused the bank to convey to Title Guarantee and Trust Company the said Vermont Avenue property, title to which was taken by Title Guarantee and Trust

Company under a Declaration of Trust numbered 750, a copy of which is annexed hereto marked Exhibit "A". In the following year Mr. Mitchell caused the bank to convey to Title Guarantee and Trust Company the two other parcels of real estate consisting of 135 acres of land in Cahuenga Pass, and beach property at Santa Monica, California, to secure a loan to pay off the balance of his indebtedness to Pacific Southwest Trust and Savings Bank. Title to both parcels of property was taken by Title Guarantee and Trust Company under its Declaration of Trust numbered 822, a copy of which is annexed hereto marked Exhibit "B". Title Guarantee and Trust Company also issued its Declaration of Trust No. 807, covering a portion of the property described in Declaration of Trust No. 822, a copy of which is annexed hereto marked Exhibit "C".

In the year 1923 Mr. Mitchell authorized the Title Guarantee and Trust Company to sell all of the Cahuenga acreage, title to which was conveyed to F. A. Hartwell in two separate parcels, the first of 115 acres in consideration of the sum of \$345,000.00, of which \$50,000.00 was paid in cash with a note for \$295,000.00, secured by a deed of trust, evidencing the balance; and the second parcel of 20 acres in consideration of the sum of \$110,000.00, of which \$20,000.00 was paid in cash with a note for \$90,000.00, secured by a deed of trust evidencing the balance.

Each of these notes was made payable to John W. Mitchell. [45]

On April 1, 1924, the Title Guarantee and Trust Company issued a Declaration of Trust under number 822-B, a copy of which is hereto attached and marked Exhibit "D".

At that time Title Guarantee and Trust Company held title to the remaining portion of the real estate described in Declaration of Trust No. 822 not theretofore conveyed to Hartwell or the Los Angeles Stone Company.

At the times the two notes made by F. A. Hartwell hereinbefore mentioned, and the note made by Los Angeles Stone Company to the order of John W. Mitchell, referred to in Declaration of Trust No. 807, were executed and delivered by the payees thereof, said John W. Mitchell deposited them with Title Guarantee and Trust Company as collateral security for the payment of certain indebtedness then owing by him to it. Said notes continued to be held by said Title Guarantee and Trust Company during the taxable periods here in question.

Upon the death of John W. Mitchell, on July 2, 1925, Mrs. Mitchell was appointed as Executrix of his estate and as Executrix she filed a return for the decedent for the period January 1 to July 2, 1925, and as such Executrix for subsequent income tax periods, to wit: July 3, 1925 to December 31, 1925, and for the years 1926, 1927, and 1928. No separate return was filed by Mrs. Mitchell for the year 1925.

In 1930, without the knowledge or consent of Mrs. Adina Mitchell, delinquent returns were pre-

pared for Mrs. Mitchell, signed by a Deputy Collector for the period July 2nd to December 31st, 1925, and for the years 1926 and 1927. These returns are stamped as received by the Collector of Internal Revenue for the Sixth District of California on February 7, 1930. [46]

For the year 1928, without the knowledge or consent of Mrs. Mitchell, a delinquent return was prepared for Mrs. Mitchell, signed by a Deputy Collector, which is marked received by the Collector of Internal Revenue for the Sixth District of California on November 4, 1930.

Said delinquent returns were prepared and filed by the Deputy Collector after audit of the returns prepared and filed by the said Adina Mitchell as Executrix of the Estate of John W. Mitchell, deceased, the office of the Collector of Internal Revenue taking the position that the income resulting during said taxable periods was the personal income of Mrs. Mitchell and not the income of the estate of her husband.

The net taxable income on the note of the Los Angeles Stone Company for the years 1925 and 1926 was as follows:

1925, to July 2nd .....	\$11,586.12
1925, from July 2nd to December	
31st .....	7,121.51
and for 1926.....	6,080.39.

In Declaration of Trust No. 750 the net distributive income for the year 1925 prior to the death of

John W. Mitchell was \$24,102.50. This Trust was closed in April, 1925, no income being received thereafter.

The net taxable income realized from payments made on the notes of F. A. Hartwell and the sale of property mentioned in the next paragraph for the year 1925 was the sum of \$100,969.10, which was credited on the books of trust #822 of which amount the sum of \$50,585.55 was received prior to July 2nd, 1925 and the balance, or the sum of \$50,484.55, was received between the periods of July 2nd, 1925 and December 31, 1925.

That immediately following the death of John W. Mitchell, Title Guarantee and Trust Company conveyed a portion of the property [47] to which it held title under Declaration of Trust No. 822 for a total consideration of \$87,124.00, less commission and selling expenses of \$5,975.25, which consideration was paid in cash at said time. That if the March 1, 1913 value of said property is material to a determination of the net taxable income resulting from said sale, it was the sum of \$14,521.39.

For the years 1926, 1927, and 1928, net taxable income was realized from the said F. A. Hartwell notes as follows:

1926 .....	\$43,143.10
1927 .....	\$39,740.10
1928 .....	\$45,699.55.

That there was no change in the fair market value of any of the real or personal property in-

volved in the said taxable periods from date of death to date of the realization of the income therefrom.

It is further stipulated and agreed that a Federal Estate tax return was filed for John W. Mitchell, deceased, the date of death being July 2, 1925, and a copy of which is hereto attached marked Exhibit "E". A deficiency in Federal Estate tax was determined by the Commissioner, as disclosed by the deficiency letter, a copy of which is hereto attached and marked Exhibit "F". Subsequently, an adjustment to the determination of the Commissioner was made whereby a deficiency in Federal Estate tax was stipulated to be \$2,589.55 as disclosed by a computation hereto attached, and marked Exhibit "G".

That the March 1, 1913 value of the properties herein referred to as being sold prior to the death of John W. Mitchell was as follows: [48]

Vermont Avenue .....	\$166,600.00
Cahuenga Acreage .....	\$145,000.00
Beach Property .....	\$ 14,521.39.

It is further stipulated and agreed that the above-entitled appeals may be stipulated on the foregoing statement of facts, no further evidence to be introduced by either party.

RALPH W. SMITH,

Counsel for Petitioners.

E. BARRETT PRETTYMAN,

WBI

General Counsel, Bureau of Internal Revenue, Counsel for Respondent.

[49]



EXHIBIT "A".

Enclosure for Bureau.

DECLARATION OF TRUST.

Trust #750.

THIS DECLARATION OF TRUST made this 21st day of November, A. D. 1921.

WITNESSETH:

THAT WHEREAS, KING C. GILLETTE and ALANTA E. GILLETTE, his wife, by deed dated November 15th, 1921, conveyed to TITLE GUARANTEE AND TRUST COMPANY, a corporation, organized and existing under and by virtue of the laws of the State of California, the following described real property situated in the City of and County of Los Angeles, State of California, to-wit:

That portion of the North East quarter of the North East quarter of Section Twenty-four (24), Township One (1) South, Range Fourteen (14) West, S. B. M., described as follows:

Beginning at a point in the East line of said Section, distant Forty (40) feet South from the North East corner thereof, said point being the intersection of the center line of Vermont Avenue, with the prolongation of the South line of Temple Street, as conveyed to the City of Los Angeles, by deed recorded in Book 5606, Page 25 of Deeds, Records of said County; thence south along the center line of Vermont Avenue, Twelve Hundred Sixteen (1216) feet

to the intersection of said center line with the prolongation of the North line of West First Street, as conveyed to the County of Los Angeles, by deed recorded in Book 918, Page 290 of said Deed Records; thence West Three Hundred Fifty (350) feet to the East line of New Hampshire Street, as conveyed to the City of Los Angeles, by deed recorded in Book 5562, Page 247 of said Deed Records; thence North along said New Hampshire Street, Twelve Hundred Sixteen (1216) feet to the South line of Temple Street; thence East Three Hundred Fifty (350) feet to the point of beginning.

AND WHEREAS said property was conveyed to the TITLE GUARANTEE AND TRUST COMPANY, hereinafter referred to as the Trustee, free and clear of all incumbrances, except that certain mortgage in the sum of \$85,000.00, dated June 28th, 1920, due June 28th, 1923, in favor of Security Trust and Savings Bank, recorded in Book 4629, Page 119 of Mortgages, Records of Los Angeles County, California.

AND WHEREAS, although title has heretofore been vested in the name of King C. Gillette, John W. Mitchell has an interest therein, as hereinafter more particularly set forth.

AND WHEREAS the said KING C. GILLETTE and JOHN W. MITCHELL are preparing for record a map of said property to be known and

designated as the John W. Mitchell Home Tract, a subdivision consisting of twenty-two lots as shown and designated in a plat hereto attached marked "Exhibit "A", and whereas the said KING C. GILLETTE and JOHN W. MITCHELL contemplate placing said lots on the market at once and to that end have entered into a certain agency agreement with one L. A. Dolton, a copy of which said agreement is [50] hereto attached marked "Exhibit "B", and in order to expedite such sales and to more fully define the interests of said King C. Gillette and John W. Mitchell have caused the deed hereinbefore referred to to be made in favor of the TITLE GUARANTEE AND TRUST COMPANY, upon the trusts and confidences hereafter set out.

AND WHEREAS the said KING C. GILLETTE, by reason of a consideration which has heretofore passed to the said JOHN W. MITCHELL, is entitled to one-half of the net proceeds realized from the sale of said property, whether by reason of the foregoing agency agreement or otherwise, after first having paid the following items:—

(1) The fees, costs and expenses of the Title Guarantee and Trust Company, hereafter referred to as the Trustee, for its services as Trustee under the Trust hereinafter declared, and for its other necessary expenses in connection with the sale of the property.

(2) Security Trust and Savings Bank, the amount necessary to release lots when sold from the lien of its mortgage, a schedule of said release prices being hereto attached marked "Exhibit "C".

(3) Pay L. A. Dalton his commission as provided in the agency agreement hereto attached marked "Exhibit "B".

(4) Pay the expenses of grading and improving said tract in sums hereinafter to be approved by the said KING C. GILLETTE and JOHN W. MITCHELL, and also for the payment of any taxes, liens or assessments which shall hereafter accrue against said property before the same shall become delinquent, unless sold subject thereto.

(5) Pay John W. Mitchell the entire balance of principal and interest received from the sale of said property until the amount thereof shall aggregate the sum of \$65,000.00.

NOW THEREFORE THIS IS TO WITNESS, that the Trustee hereby declares that it holds said property in Trust for KING C. GILLETTE and JOHN W. MITCHELL upon the terms and conditions hereinbefore provided for the purpose of selling said property and to that end executing deeds and accepting mortgages and of disbursing the proceeds realized therefrom as hereinbefore provided, and for such other purposes as are herein set forth, to all of which terms said KING C. GILLETTE and JOHN W. MITCHELL, hereinafter referred to as the [51] Beneficiaries, hereby agree and bind themselves, their heirs, administrators, executors and assigns as fully as though directly made parties hereto.

THE PROVISIONS OF THIS TRUST ARE  
AS FOLLOWS:—

(1) The Beneficiaries shall pay or cause to be paid before the same shall become delinquent any and all taxes, liens or assessments levied, assessed or to become due against said property including the expenses of subdividing and improving the streets, etc., *their* being no liability upon the Trustee to pay the same nor to enter into possession of said property, nor to perform any duties than as otherwise herein specifically provided

(2) The Trustee shall subscribe to the map, a copy of which is hereto attached marked "Exhibit "A", dedicating to public use, streets and alleys shown thereon, and after such subdivision has been duly recorded, shall sell lots to purchasers in accordance with the terms of the agency agreement hereto attached marked "Exhibit "B", and if for any reason the said sales agency shall become terminated, the Trustee shall sell upon the joint order of the Beneficiaries and upon such terms as they shall designate.

All moneys realized from the sale of said property shall be paid to the Trustee and shall be by it disbursed as herein provided. Building restrictions shall be imposed by the Trustee upon said lots, as the Beneficiaries shall hereafter direct. The proceeds realized from the sale of lots shall be by the Trustee disbursed as in the preamble hereof provided. Instead of filing one map as shown by "Exhibit A",

two or more maps may be filed if so requested by JOHN W. MITCHELL.

The fees of the Trustee for conducting this Trust are hereby fixed as follows:—

(a) For installing the said Trust, the sum of \$100.00

(b) For drawing deeds and other instruments, \$2.00 each.

(c) For the collection of moneys, 1% of the sale price of the property and interest thereon.

(d) Should any un contemplated or unforeseen service be required not provided for herein which may be necessary to carry out the provisions of this Trust, then there shall be payable to the Trustee by the Beneficiaries a fair and reasonable charge for the performance of such duties. [52]

The Beneficiaries shall furnish Certificates of Title to purchasers at their own expense. The base search shall be written for \$50.00 and separate guarantees on lots shall be at the following rates:—

(a) \$5.00 for a guarantee containing one lot or fraction of a lot, providing the value does not exceed \$1000.00.

(b) On lots valued at more than \$1000.00 and not exceeding \$3000.00 guarantees will be furnished for \$7.50.

(c) If the value of the lot exceeds \$3000.00 a charge of \$2.50 for each thousand dollars or fraction in excess of said \$3000.00 will be added to the \$7.50 charge above mentioned.

(d) An additional charge of \$1.00 will be added for each lot or fraction in addition to the first lot described in the guarantee.

IN WITNESS WHEREOF, the TITLE GUARANTEE AND TRUST COMPANY, a corporation, as aforesaid, has caused this Declaration of Trust to be duly executed, the name of the corporation being duly signed by its Vice-President and attested by its Assistant Secretary, under its corporate seal, the day and year first above written.

TITLE GUARANTEE AND TRUST  
COMPANY

By D. W. PEAK  
Vice-President

Attest: A. R. KILLGORE  
Assistant Secretary [53]

The undersigned BENEFICIARIES do hereby certify and declare that the foregoing Declaration of Trust fully sets out and discloses the terms under which said described property is held in Trust by TITLE GUARANTEE AND TRUST COMPANY, and hereby approve, confirm and ratify the same in all its part, and hereby bind themselves, their heirs and assigns by the terms thereof.

Dated at Los Angeles, California, this 26th day of November, A. D. 1921.

KING C. GILLETTE  
JOHN W. MITCHELL

THIS IS TO CERTIFY that the foregoing is a full, true and correct copy of Declaration of Trust

No. 750 on file in the Trust Department of Title Guarantee and Trust Company.

TITLE GUARANTEE AND TRUST  
COMPANY

By E. W. FRANKLIN  
Vice-President. [54]

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EXHIBIT "B"

DECLARATION OF TRUST

Trust #822

THIS DECLARATION OF TRUST made this 14th day of December, A. D. 1922.

WITNESSETH:

THAT WHEREAS, PACIFIC SOUTHWEST TRUST & SAVINGS BANK, (formerly Los Angeles Trust & Savings Bank) a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business at Los Angeles, California, conveyed to TITLE GUARANTEE AND TRUST COMPANY, a corporation likewise organized and existing, all that certain real property in the County of Los Angeles described as follows, to-wit:—

That portion of Lot One (1) of the Replat of a portion of the property of the Lankershim Ranch Land and Water Company, as per map recorded in Book 66, Page 83 et seq., Miscell-



aneous Record of said County, described as follows:—

Beginning at a point in the Southerly line of Los Angeles and Ventura County Road at the most Northerly corner of the land conveyed to Meta B. Parkinson, by deed recorded in Book 3443, Page 206 of said Deed Records; thence along the Southerly line of said Road, North Fifty-two degrees ( $52^{\circ}$ ) Forty-four minutes ( $44'$ ) Thirty Seconds ( $30''$ ) West, Eight Hundred Seventy-two and Seventy-four Hundredths ( $872.74$ ) feet more or less to an angle point therein; thence still along the Southerly line of said Road, North Sixty-five degrees ( $65^{\circ}$ ) Two minutes ( $2'$ ) Thirty seconds ( $30''$ ) West, Two Hundred Twenty-three and Twenty-two Hundredths ( $223.22$ ) feet to an angle point thereon; thence still along the Southerly line of said Road North Seventy-four degrees ( $74^{\circ}$ ) Forty minutes ( $40'$ ) Thirty seconds ( $30''$ ) West, Nine Hundred Twenty-six and Sixteen Hundredths ( $926.16$ ) feet to an angle point in said Road; thence leaving said road and running in a Southerly direction Twenty-six Hundred Thirty-five ( $2635$ ) feet to a point in the Southerly line of said Lot One (1), distant along said line North Eighty-six degrees ( $86^{\circ}$ ) Fifty-seven minutes ( $57'$ ) West, Seventeen Hundred and Ten ( $1710$ ) feet from the South West corner of the land conveyed to Meta Parkinson, by deed recorded in Book 3405, Page 299 of Deeds;

thence along said Southerly line South Eighty-six degrees ( $86^{\circ}$ ) Fifty-seven minutes ( $57'$ ) East, Seventeen Hundred and Ten (1710) feet to the said South West corner of the land conveyed to Meta Parkinson; thence along the Westerly line of the land so conveyed to Meta Parkinson North Twelve degrees ( $12^{\circ}$ ) Forty-three minutes ( $43'$ ) East, Fourteen Hundred Three and Fifty Hundredths (1403.50) feet to the most Southerly corner of the land conveyed to Meta B. Parkinson, by deed recorded in Book 3443, Page 206 of said deed Records; thence North Westerly Five Hundred (500) feet more or less, to the point of beginning. [55]

That portion of said Lot One (1) of the Replat of a portion of the property of the Lanekershim Ranch, Land and Water Company, described as follows:—

Beginning at an angle point in the Southerly line of the Los Angeles and Ventura County Road at the most Northerly corner of the land conveyed to John W. Mitchell, by deed recorded in Book 4141, Page 29 of Deeds; thence South Fifty-one degrees ( $51^{\circ}$ ) Thirty-one minutes ( $31'$ ) West, Thirteen Hundred Forty-seven (1347) feet; thence South Twenty-nine degrees ( $29^{\circ}$ ) Seventeen minutes ( $17'$ ) East, Seven Hundred Two (702) feet, more or less, to a point from which an oak tree bears North Sixty degrees ( $60^{\circ}$ ) Forty-three minutes ( $43'$ )

East, Forty (40) feet distant; thence South Twenty-three degrees ( $23^{\circ}$ ) Thirty-two minutes ( $32'$ ) East, Twelve Hundred Seventy-six (1276) feet, more or less, to a point in the Southerly line of said Lot One (1); thence along said Southerly line South Eighty-six degrees ( $86^{\circ}$ ) Fifty-seven minutes ( $57'$ ) East, One Hundred Twenty-two (122) feet more or less to a point which is distant North Eighty-six degrees ( $86^{\circ}$ ) Fifty-seven minutes ( $57'$ ) West, Seventeen Hundred Ten (1710) feet from the South West corner of the land conveyed to Meta Parkinson, by deed recorded in Book 3405, Page 299 of Deeds; thence Northerly Twenty-six Hundred Thirty-five (2635) feet, more or less, to the point of beginning.

All that certain real property situate in the City of Santa Monica, County of Los Angeles, State of California, described as follows:

That portion of the Rancho San Vicente y Santa Monica beginning at a point in the South Westerly line of the twenty (20) foot strip of land conveyed to the City of Santa Monica, by deed recorded in Book 4530, Page 152 of Deeds, distant along said line, One Hundred Ten and Ten Hundredths (110.10) feet North Westerly from the North Westerly line of the Sunset Beach Tract, as per map recorded in Book 83, Page 10, Miscellaneous Records of said County; thence North Forty-five degrees ( $45^{\circ}$ ) Fifteen minutes ( $15'$ ) East, Two Hundred Twenty-three (223) feet to a

point in the South Westerly line of Ocean Avenue; thence along said South Westerly line North Forty-four degrees ( $44^{\circ}$ ) Forty-five minutes ( $45'$ ) West, Eleven Hundred Ninety-eight and Seventy-four Hundredths (1198.74) feet to the true point of beginning; thence along said South Westerly line of Ocean Avenue North Forty-four degrees ( $44^{\circ}$ ) Forty-five minutes ( $45'$ ) West, Seventeen Hundred Sixteen and Eighteen Hundredths (1716.18) feet; thence parallel with Idaho Avenue South Forty-five degrees ( $45^{\circ}$ ) Fifteen minutes ( $15'$ ) West, Four Hundred Seventy-five and Seventy-one Hundredths (475.71) feet, more or less, to the ordinary high tide line of the Pacific Ocean; thence South Easterly along said ordinary high tide line, Seventeen Hundred Eighteen (1718) feet, more or less, to a point in said ordinary high tide line, which bears South Forty-five degrees ( $45^{\circ}$ ) Fifteen minutes ( $15'$ ) West from said true point of beginning; thence parallel with said Idaho Avenue North Forty-five degrees ( $45^{\circ}$ ) Fifteen minutes ( $15'$ ) East to the true point of beginning.

EXCEPTING therefrom that portion of said tract lying between the South Westerly line of Ocean Avenue and the upper contour line of the bluffs as set aside to the City of Santa Monica for park purposes by decree had in Case No. 14541 S. C. of said County.

EXCEPTING therefrom that portion of said tract lying between the South Westerly line of Ocean Avenue and the upper contour line of the bluffs as set aside to the City of Santa Monica for park purposes by decree had in Case No. 14541 S. C. of said County.

ALSO EXCEPTING therefrom the Fifty (50) foot right of way conveyed to the S. P. R. R. Co. by deed recorded in Book 763, Page 184 of Deeds, and [56]

WHEREAS a portion of the property hereinbefore described, situated in the City of Santa Monica, is held in Trust under and by virtue of the terms of Trust #807 of Title Guarantee and Trust Company, and all the remainder of the property hereinbefore described is held in Trust subject to the terms hereof, and

WHEREAS the said property conveyed by PACIFIC SOUTHWEST TRUST & SAVINGS BANK to TITLE GUARANTEE AND TRUST COMPANY, hereinafter referred to as the Trustee, although absolute in form was nevertheless made in Trust, said property having hitherto been held in Trust by Pacific Southwest Trust & Savings Bank for JOHN W. MITCHELL, and the conveyance to the Trustee herein was made at the request of and for the benefit of the said JOHN W. MITCHELL, hereinafter referred to as the Beneficiary, subject to all the terms of this Trust, and

WHEREAS the Beneficiary has borrowed and received of L. C. BRAND, hereinafter referred to as the Lender, the sum of Sixty-eight Thousand (\$68,000.00) Dollars, which said indebtedness is evidenced by a note in words and figures as follows, to-wit:—

Los Angeles, California,  
December 14th, 1922.

\$68,000.00

Three (3) years after date and for value received, we or either of us promise to pay to L. C. BRAND or order, at Los Angeles, California, the sum of Sixty-eight Thousand (\$68,000.00) Dollars, with interest from date until paid at the rate of seven per cent (7%) per annum, payable quarterly.

Should the interest not be so paid it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of interest when due, the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States.

This note is secured by assignment of all our right, title and interest in and to Trust #750, #807 and #822 respectively, of Title Guarantee and Trust Company.

(Signed)

JOHN W. MITCHELL  
ADINA MITCHELL

NOW THEREFORE THIS IS TO WITNESS that the Trustee holds and shall continue to hold title to the hereinbefore described property in Trust for the Beneficiary and for the Lender for the purpose of [57] securing the payment of the indebtedness evidenced by the above note, and also as security for any other indebtedness of the Beneficiary to the Lender or the Trustee, whether evidenced by a note or otherwise, and to secure the payment of any and all costs and expenses incurred in connection therewith and in the collection thereof, and for any advancements made by the Trustee or the Beneficiary for the care or protection or benefit of the property so held in Trust, together with any attorneys fees or other charges incurred by the Lender or the Trustee in connection with the enforcement of the payment of said indebtedness.

Said property is also held in Trust for the purpose of making sale of said property or any part thereof and of subdividing the same and of receiving and disbursing proceeds realized therefrom, and for such other purposes as are herein set forth, on the following terms and conditions, and to those ends all of the parties by their written approval hereof agree and bind themselves, their heirs, executors, administrators, successors and assigns.

THE PROVISIONS OF THIS TRUST ARE AS FOLLOWS:

FIRST: The Beneficiary shall pay to the Trustee for the account of the Lender the sum of Sixty-

eight Thousand (\$68,000.00) Dollars and interest in accordance with the terms of the note hereinbefore set out, and also any other indebtedness of the Beneficiary payable to the Lender or the Trustee whether evidenced by a note or otherwise, together with any and all costs and expenses incurred in connection therewith and in the collection thereof, and for any advancements made by the Trustee or the Beneficiary for the care or protection or benefit of the property so held in Trust, together with attorneys' fees or other charges incurred by the Lender or the Trustee, together with interest on any of the said sums.

SECOND: The Beneficiary shall pay before delinquent all taxes, [58] liens and assessments of every kind and nature, levied, assessed or to become due against said property. In event of the non-payment of any such taxes, assessments or liens the Lender or the Trustee may at their option and without notice pay the same and may thereupon demand the immediate re-payment of all sums so advanced, which sums so advanced shall draw interest until paid at the rate of ten per cent (10%) per annum. This provision however shall impose no obligation upon either the Lender or the Trustee to make any such payment.

THIRD: The Trustee at the request of the Beneficiary shall sell the said property or parts thereof at such prices and upon such terms as the Beneficiary shall direct, provided however that the same shall be an amount satisfactory to and approved by



the Lender, his heirs or assigns. All moneys realized from any such sale or sales shall be paid by purchasers thereof to the Trustee, and after the payment of fees, costs and expenses of the Trust, shall be by the Trustee applied to the discharge of the indebtedness or obligations of the Lender secured hereby. Upon payment in full of the indebtedness secured hereby and the discharge of all the other obligations hereunder all right, claim or interest of the Lender hereunder shall cease and be discharged, and the Trustee shall thereupon hold the entire remaining assets of this Trust for the Beneficiary, his heirs or assigns.

FOURTH: Should default be made in the payment of any installment of principal or interest secured hereby when due, or should the Beneficiary fail to do or perform any of the other things provided to be done by the terms hereof, then said Lender, his heirs, executors, administrators or assigns, may declare all of the indebtedness secured hereby due and payable at once, and may cause to be filed in the office of the County Recorder of said Los Angeles County, a notice that the debt is due and unpaid, and that he elects to have part or all of the property described in the deed of trust sold to satisfy the said debt, and three months after filing of said notice the said Trustee may and [59] shall upon demand of the Lender proceed to sell the above described property or any part thereof, as said Trustee, its successors or assigns shall in its discretion find it necessary to sell in order to accom-

publish the objects of this Trust in the manner following, viz:

Said Trustee, its successors or assigns shall first publish notice of the time and place of such sale with a description of the property to be sold at least once a week for three successive weeks in some newspaper of general circulation, printed and published in the County of Los Angeles, State of California, and notice of such sale shall be posted complying with the laws of the State of California, governing sales under execution and may from time to time for one or several days postpone such sale by publication by republishing the notice of sale in the same newspaper and the date of postponement of sale, and on the date of sale so advertised, or any date to which such sale shall be postponed, said Trustee, its successors or assigns, may sell the property so advertised, the whole or any part thereof, at public auction in the City of Los Angeles, California, to the highest bidder, and the Lender herein, his heirs and assigns, or the holder or holders of said promissory notes to be executed by said Beneficiary, his agent or assigns, may bid and purchase on such sale, and said Trustee, its successors or assigns, may establish as one of the conditions of such sale that all bids and payments for the said property shall be made in like gold coin as aforesaid, and upon such sale shall make, execute and after due payment made, deliver to the purchaser or purchasers, or their heirs or assigns, a deed or deeds of grant, or a deed in any form it may

select, conveying so much of the above granted property as is sold, and out of the proceeds thereof shall pay:

1st. The expenses of such sale, together with all the expenses of this Trust, including counsel fees, if the same be necessary, all advances made in protection hereof, and interest on any payments so made.

2nd. The principal and interest unpaid on the indebtedness secured hereby. [60]

3rd. The balance or surplus of such proceeds, if any, to the Beneficiary, his heirs or assigns.

And in the event of the sale of said property or any part thereof, and the execution of a deed or deeds therefor under these Trusts, then the recital thereon of default, publication of notice, sale and receipt of any purchase money, shall be conclusive proof of such default, of the due publication of notice required of sale, that the sale was made to the highest bidder, that the purchase price was paid, and any such deed or deeds with such recital shall be effective and conclusive as against the Beneficiary, his heirs or assigns, and all other persons, and the recital of the receipt of the purchase money contained in any deed executed to any purchaser as aforesaid shall be sufficient discharge to such purchaser of any obligation to see to the proper application of the purchase money according to the Trust herein provided for.

FIFTH: The Beneficiary shall supply at his own cost and expense guarantees of title of Title

Guarantee and Trust Company showing title to all the hereinbefore described property vested in the name of the Trustee, and the Beneficiary hereby represents that the title to said property by the filing of the deed first herein mentioned, will show vested in the name of the Trustee free and clear of all incumbrances except:

1. Taxes for the fiscal year 1922-1923.
2. Reservations, rights of way and easements of record.

When the said property or any portion thereof is conveyed to the Trustee, the Beneficiary shall furnish at his own cost and expense a guarantee issued by Title Guarantee and Trust Company on the part so conveyed.

SIXTH: The fees of the Trustee for its services hereunder are hereby fixed as follows:

(a) For the acceptance hereof the sum of One Thousand (\$1000.00) Dollars.

(b) An annual fee of Seven Hundred and Fifty (\$750.00) Dollars [61] for every year or fraction thereof during which this Trust shall continue.

(c) In the event the said property or any part thereof is subdivided there shall be paid to the Trustee a reasonable fee for the placing of the same upon its books and installing this phase of the transaction as an elaboration hereof, together with collection fees, as follows:

Where property is sold for cash a two per cent (2%) collection fee, and a fee of two and one-half per cent (2½%) where property is sold upon terms,

the installments of which do not exceed four in number and do not extend beyond a period of three years from date thereof. Where property is sold under less favorable terms a collection fee of three per cent (3%) shall be charged. There shall also be paid to the Trustee its usual and customary fees for the preparation of all instruments necessary in connection with such sales. If parcels of said property are sold before subdivision a fair and reasonable collection fee shall be charged based upon the sale price of the property.

(d) Should any un contemplated or unforeseen services be required not provided for herein which may be necessary to be performed to carry out the provisions of this Trust a fair and reasonable charge shall be made for the performance thereof.

IN WITNESS WHEREOF, TITLE GUARANTEE AND TRUST COMPANY, a corporation as aforesaid, has caused this Declaration of Trust to be duly executed, the name of the corporation being signed by its Vice President and attested by its Secretary, under its corporate seal, the day and year first above written.

TITLE GUARANTEE AND TRUST  
COMPANY

By A. F. MORLUM

Vice President

Attest: A. R. KILGORE

Secretary [62]

We the undersigned Beneficiaries, do hereby certify and declare that the foregoing Declaration of

Trust fully sets out and discloses the terms under which said described property is held in Trust by the TITLE GUARANTEE AND TRUST COMPANY, and hereby approve, confirm and ratify the same in all its parts, and hereby bind themselves, their heirs and assigns by the terms hereof.

Dated at Los Angeles, California, this ..... day of December, A. D. 1922.

.....  
Lender

.....  
Owner

I, wife of John W. Mitchell do hereby ratify, approve and confirm the foregoing Declaration of Trust in all its terms and authorize the Trustee to carry out the provisions hereof.

.....  
[63]

—————  
DECLARATION OF TRUST

Trust #807

KNOW ALL MEN BY THESE PRESENTS:  
That by deed dated December 11th, 1922, PACIFIC SOUTHWEST TRUST & SAVINGS BANK, a corporation organized and existing under and by virtue of the laws of the State of California, conveyed to TITLE GUARANTEE AND TRUST COMPANY, a corporation likewise so existing, hereinafter referred to as the Trustee, all that

certain real property situated in the City of Santa Monica, County of Los Angeles, State of California, described as follows, to-wit:

Part of the Rancho San Vicente y Santa Monica, described as follows:

Beginning at a point in the South Westerly line of the strip of land Fifty (50) feet wide conveyed by John P. Jones and Arcadia B. de Baker to the Southern Pacific Railroad Company, by deed recorded in Book 763, Page 184 of Deeds; said point of beginning being the intersection of said line with the North Westerly line of that certain tract of land conveyed by the Santa Monica Land Company, a corporation, to J. B. Lankershim and John W. Mitchell, by deed recorded in Book 4741, Page 183 of Deeds; thence South Forty-seven degrees ( $47^{\circ}$ ) Fifteen minutes ( $15'$ ) East along the South Westerly line of said Fifty (50) foot strip, Fifteen Hundred (1500) feet to a point distant North Forty-seven degrees ( $47^{\circ}$ ) Fifteen minutes ( $15'$ ) West, along said South Westerly line Two Hundred and Seventeen and Eighty-one Hundredths (217.81) feet from the intersection thereof with the South Easterly line of land conveyed by J. B. Lankershim to John W. Mitchell, by deed recorded in Book 6202, Page 204 of Deeds; thence South Forty-five degrees ( $45^{\circ}$ ) Fifteen minutes ( $15'$ ) West, along a line parallel with the South

Westerly prolongation of the North Westerly line of Montana Avenue, Two Hundred Ten (210) feet, more or less, to the line of ordinary high tide of the Pacific Ocean; thence North Westerly along said line of ordinary high tide to a point bearing South Forty-five degrees ( $45^{\circ}$ ) Fifteen minutes ( $15'$ ) West (on a line parallel with said North West line of Montana Avenue prolonged) from the point of beginning; thence North Forty-five degrees ( $45^{\circ}$ ) Fifteen minutes ( $15'$ ) East to the point of beginning,

the above described property constituting a part of the property so conveyed.

WHEREAS as shown by Guarantee #455790 of Title Guarantee and Trust Company said property was conveyed to the Trustee free and clear of all incumbrances except: [64]

(1) Second half taxes for the fiscal year 1922-23.

(2) A right of way for sewer over a strip Ten (10) feet wide parallel with the right of way of the Southern Pacific Railroad and Westerly Twenty-three (23) feet therefrom, granted to the Town of Santa Monica, by deeds recorded in Book 1632, Page 17, and Book 1609, Page 26 of Deeds.

(3) An easement for street purposes over a strip Twenty (20) feet, more or less, wide lying next to and adjoining South Westerly



the Westerly line of S. P. R. R. right of way, granted to the City of Santa Monica, by deed recorded in Book 4530, Page 152 of Deeds.

(4) Whatever rights for street purposes, by reason of certain unrecorded and lost deeds, the City of Santa Monica may have in certain portions of said premises as will appear from Ordinance No. 601 of the Board of Trustees of said City, a certified copy of which is of record in Book 236, Page 237, Miscellaneous Records, reference to which record and the map attached thereto, is made for description of the land claimed and other particulars.

The following notes appear after the description of the property in the aforementioned guarantee issued by Title Guarantee and Trust Company:

As to that portion of said land lying Westerly of the patent boundary lines of the Rancho Vicente y Santa Monica, this guarantee is based upon the assumption that the same was forced by the deposit of alluvium in imperceptible degrees and became and is thereby vested in the owner of the adjoining mainland.

No liability is assumed in respect to the area thereof available as land, and

WHEREAS no consideration was paid by the Trustee individually for the conveyance to it of the property aforesaid, but a portion of such consideration, to-wit: the sum of Twenty-five Thousand (\$25,000.00) Dollars of said purchase price has been

paid by the following named parties and in the following proportions, their interests hereunder as beneficiaries being in like proportion:—

Los Angeles Stone Company, an undivided three-twelfths ( $3/12$ )

F. E. Bundy, an undivided three-twelfths ( $3/12$ )

C. L. Bundy, an undivided two-twelfths ( $2/12$ )

R. F. Sherman, an undivided two-twelfths ( $2/12$ )

F. M. Siener, an undivided two-twelfths ( $2/12$ )

said parties herein referred to as the Buyers, and

WHEREAS there remains an unpaid balance of said purchase price owing and payable to John W. Mitchell by said Buyers in proportion to their ownership herein as hereinbefore set out, the sum of One Hundred and Twenty-five Thousand (\$125,000.00) Dollars, evidenced by a note in words and figures as follows, to-wit:— [65]

\$125,000.00

Los Angeles, California,

December 11th, 1922.

For value received we severally promise to pay JOHN W. MITCHELL or order, in the proportions set opposite our respective names, the sum of One Hundred and Twenty-five Thousand (\$125,000.00) Dollars, in installments of Twelve Thousand, Five Hundred (\$12,500.00) Dollars each on or before the 15th day of November of every year commencing

November 15th, 1923 at the office of Title Guarantee and Trust Company of Los Angeles, California, until the principal sum hereof is fully paid, all principal unpaid to bear interest from date until paid at the rate of six per cent (6%) per annum, payable semi-annually.

Should the interest not be so paid it shall become a part of the principal and thereafter bear like interest as the principal. Should default be made in the payment of any installment of the principal or interest when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note. Principal and interest payable in gold coin of the United States.

This note is secured by Declaration of Trust #807 of Title Guarantee and Trust Company.

(Signed) LOS ANGELES STONE CO. 3/12

By .....

[Corporate Seal]

President.

Attest: .....

Secretary.

F. E. BUNDY, 3/12

C. L. BUNDY, 2/12

R. P. SHERMAN, 2/12

F. M. SIENER, 2/12

NOW THEREFORE THIS DECLARATION OF TRUST WITNESSETH: that the Trustee certifies and declares that it holds and shall continue to hold said described property and every part

thereof in Trust only upon the terms, conditions and provisions hereinafter specifically set forth, to-wit:—

FIRST: To secure the full payment of said unpaid remainder of said purchase price of said property as hereinbefore provided, payable to the Seller, together with interest thereon at the time and times and in the manner above set out, and also as security for the payment of any and all costs and expenses incurred in connection therewith and in the collection thereof, and for any advancements made by the Trustee or the Seller for the care or protection or benefit of property so held in Trust, together with any attorneys' fees and other charges incurred by the Seller or by the Trustee in [66] connection with the enforcement of the payment of said unpaid remainder of said purchase price.

SECOND: To permit the Trustee acting for the Buyers to subdivide said property or portions thereof into lots, with full authority given the Trustee to subscribe to a map or maps of such proposed subdivision, provided that no part thereof is dedicated to any public use. If any street thereof is to be so dedicated then the Seller must consent to such subdivision. The Trustee however, shall be permitted to sell portions of said property by metes and bounds when so requested to do by the Buyers. If the Buyers shall incur any expenses in improving said property in any way which might subject the same to mechanic's liens, the said Buyers shall hold said property and every part thereof free and harm-

less from any such lien, claim or incumbrance arising or growing out of the installation of such improvements, and the Seller may, if he so elects, use the name of the Trustee and post upon said property a notice required by Section #1192 of the Code of Civil Procedure of the State of California, relieving said property of liability or lien by reason of such improvements.

**THIRD:** To release from the lien of said debt, being said unpaid remainder of said purchase price secured as aforesaid by this Declaration of Trust, a lot or lots or parcels by metes and bounds, upon payment to the Trustee for the account of the Seller of a release price hereby fixed at One Hundred (\$100.00) Dollars per front foot.

**FOURTH:** The Trustee shall sell said property or portions thereof and convey the same to purchasers at such prices and upon such terms and conditions of sale as it may be so directed to do by the Buyers, provided however that the said property shall not be sold at a price less than the Seller's release price, and provided further that the Trustee shall in no event make a conveyance of said [67] lot until there are sufficient moneys in its hands for the credit of the Seller to pay the release prices as above provided for such lots so conveyed.

**FIFTH:** All contracts of sale or deeds for said property or parcels thereof shall be executed by the Trustee, and all moneys realized from the sale of said lots, whether as deposits, first payments or

on contracts or for deeds or from other sources shall be paid only to the Trustee and shall be by it disbursed as follows:—

Where lots are sold for all cash the Seller's release price shall first be paid and the balance thereof shall be paid to the account of the Buyers.

Where lots or parcels are sold under agreements of sale the first twenty per cent (20%) of the sale price shall be paid to the Buyers and thereafter all payments of principal shall be divided one-half to the Buyers and one-half to the Seller until such time as the Seller's release price, so hereinbefore provided, has been fully paid, provided however that no moneys shall at any time be paid to the Buyers provided that by so doing sufficient would not remain unpaid under any contract to fully satisfy the Seller's release price. As long as there is no default in any of the terms hereof on the part of the Buyers, all interest collected under agreements of sale shall be paid to such Buyers.

**SIXTH:** The Buyers shall be privileged to take possession of all of said property and have the management and control thereof so long as there is no default hereunder, subject however in all matters, to the provisions of this Trust, and may for the purpose of making sale of said lots select and employ such agents or sub-agents as they deem fit, provided same are not objectionable to the Trustee, but any such agent or sub-agent so employed at the request of or with the consent of the Buyers shall be construed to be the agent of the Buyers and not

of the Trustee. The Buyers have specifi-[68]cally covenanted and agreed and do hereby covenant and agree to pay all taxes, liens and assessments of every kind and nature hereafter levied or assessed or to become due against said property including second half taxes for the fiscal year 1922-1923 before the same shall become delinquent, and the failure so to do shall be construed as a default hereunder and in case of such default, either the Seller or the Trustee may, but without any obligation upon either of them so to do, pay such taxes or assessments, and the amount so paid shall be immediately due and payable by the Buyers, together with interest on the amount so advanced at the rate of 10% per annum until paid, and the Buyers hereby agree to repay the amount of any and all advancements made by the Trustee or the Seller for their benefit or for the benefit or on account of said property held as aforesaid, or for improvements to be made thereon, immediately and upon demand, together with such interest thereon aforesaid, and any moneys in the hands of the Trustee realized from the sale of said lots standing to the credit of the Buyers in excess of the respective release prices of respective lots, may be used by the Trustee in its discretion for the payment of interest, taxes, street work or other improvements done upon said property when and as the same shall become due without any specific order of the Buyers to that effect, and the Trustee may pay agents'

commissions out of the moneys realized from the sale of said lots standing to the credit of the Buyers in accordance with such agency agreement as such Buyers may enter into, and the Buyers hereby obligate themselves to pay to the Trustee its fees and charges as hereinafter provided for out of any moneys in the hands of the Trustee realized from the sale of said lots and standing to their credit, and such fees and charges of the Trustee and advancements made by it shall become and constitute a lien upon the Trust property and all funds or securities coming into the hands of the Trustee hereunder standing to the credit of the Buyers, subject always however to the prior lien created hereby in favor of the Seller for the [69] release prices of lots as herein set out and upon failure on the part of the Buyers to pay or repay the Trustee said sums upon demand, or upon the failure to pay the Seller his sums of principal and interest due him or upon their failure to do anything herein provided to be done by them, then the Trustee and Seller or either of them, may at its or his option declare the unpaid principal of said purchase price, together with the interest thereon accrued and unpaid, immediately due and payable and may proceed to foreclose the rights of the Buyers hereunder in the manner hereinafter provided.

SEVENTH: All moneys paid to the Trustee for the credit of the Seller for release prices shall accumulate in the hands of the Trustee and be by it disbursed once a month on or before the fifteenth



day of every calendar month and shall thereupon be disbursed to the Seller to apply upon the principal of his indebtedness, and such payment of principal shall be applied to the payment of principal next falling due under the provisions hereof, and shall be so applied until the indebtedness secured hereby is fully liquidated, and interest on such amount so paid shall cease from the time of such payment thereof of the Trustee to the Seller, and from any moneys other than release prices in the hands of the Trustee for the account of the Buyers, the Trustee may, when due pay to the Seller the amount of interest due such Seller on the unpaid balance of the purchase price secured hereby without any specific order to that effect from the Buyers.

EIGHTH: After full payment of said purchase price and interest thereon has been made to the Seller and any advancements made by him, together with interest thereon aforesaid, then all restraint hereinabove or hereinafter imposed upon the Buyers in the management and sale of said property and improvements made thereon, shall cease and determine and all of said property then remaining shall be sold as directed by the Buyers, and all moneys realized therefrom shall be applied by the Trustee as directed by it. [70]

NINTH: An unlimited certificate of title or guarantee issued by Title Guarantee and Trust Company shall be furnished by the Seller down to the date of transfer to the Trustee showing title vested in the Seller free and clear of all incum-

brances except second half taxes for the fiscal year 1922-1923 and other incumbrances hereinbefore definitely set forth, and when lots or parcels are sold from time to time the Trustee is authorized to procure and deliver at the expense of the Buyers, certificates of title which shall be furnished when deeds are delivered.

TENTH: In the management of said property and sale of said lots the Trustee as regards the Buyers aforesaid is hereby authorized and empowered to act upon the order of the Buyers collectively holding a majority of the beneficial interest hereunder and in and when so acting, any such action on the part of the Trustee shall bind conclusively each and all the Buyers aforesaid as Beneficiaries hereunder, and for the purpose of conducting this Trust, the said majority in interest of beneficiaries may designate and select an executive committee consisting of any number of persons to represent all of said beneficiaries and the Trustee upon acting upon the authority of said executive committee so designated by such majority in interest of said beneficiaries shall be as fully protected as though acting upon the instructions of all of such beneficiaries and until a notice in writing has been presented to the Trustee of the discontinuance of such executive committee or the appointment of a new committee, the Trustee shall continue to act upon the authorization of any executive committee already appointed. All of the Buyers aforesaid shall jointly bind themselves to pay, as and when

due, in proportion to their respective beneficial interests hereunder as hereinabove set out, all sums of money necessary for the improvement of said property, and for taxes and for any and all other obligations provided for herein to be paid by the Buyers, and also any advancements made for their benefit by the Trustee or by the Seller, including the fees, [71] expenses and charges of the Trustee for acting hereunder, immediately and upon demand made upon them by the Trustee, together with interest aforesaid, if any accrued thereon, unless the equivalent thereof shall then be standing to their credit with the Trustee, realized from the sale of said property, which provision as to the liability of the Buyers under this paragraph shall extend to the payment of the unpaid principal of the purchase price of said property, together with interest aforesaid thereon and in the event that any one of said Buyers shall fail to pay his or her proportionate share of any such sums as and when the same shall become due and payable, or demand therefor shall be made by the Trustee, then the Trustee itself, or any other one or more of said Buyers hereunder shall have the right to advance and pay such share to the end that said property covered hereby, and the trust herein provided for, and all parties interested herein, may be protected; and any such sum or sums so advanced and paid for such defaulting Buyer shall bear interest from the date of such advancement until repaid at the rate of one (1) per cent per month, and in the event

of the exercising of such right above mentioned, the Trustee, on its own behalf or upon the written demand of the party or parties making such payment, and without any demand by the Trustee on such defaulting Buyer for the payment or reimbursement of such proportionate share, shall sell the interest of such defaulting Buyer under this Trust, which sale thereof shall be made by the Trustee in the following manner, namely:

The Trustee shall first publish notice of the time and place of such sale with a description of the interest so to be sold at least once a week for four successive weeks in some newspaper of general circulation published in the City of Los Angeles, California, and may from time to time postpone such sale by publication of such postponement in the same newspaper in one issue only, or at its option by public announcement of such postponement at the time and place of sale so advertised as aforesaid; and on the date of such sale so advertised or on the date to which such sale may be postponed, the [72] Trustee may sell said interest so advertised at public auction in said City of Los Angeles to the highest bidder for cash and any beneficiary hereunder or any other person may bid and purchase at such sale; and upon such sale the Trustee, after due payment made to it hereunder, may make and deliver to the purchaser at such sale an assignment and transfer of the interest so sold, and thereafter such purchaser shall have the same rights and privileges hereunder of the original

Buyer so defaulting as aforesaid, subject however, to all of the terms and conditions of this Trust; and each of said Buyers, for himself and itself, his and its successors and assigns, does hereby convey, assign and transfer to the Trustee any and all right and title whatsoever in and to his or its beneficial interest hereunder, to enable the Trustee to convey, assign and transfer such interest upon such sale thereof by the Trustee in the event of default as above provided.

Distribution of the proceeds arising from such sale by the Trustee shall be made and applied by the Trustee as follows:

1st. To the payment of the expenses of such sale, including the Trustee's fee of \$100.00, which amount shall be in addition to the fees to it elsewhere herein provided; all to become and be due and payable upon action by the Trustee on its own behalf in such sale, or upon demand being made upon the Trustee for the sale by it of the interest of such defaulting Buyer as hereinabove provided.

2nd. To the person or persons having paid the same, the amount advanced and paid by him or them for such defaulting Buyer as hereinabove provided, with interest thereon aforesaid; and the remainder, if any, to the order of such defaulting Buyer. In the event of the sale of such interest aforesaid hereunder of any such defaulting Buyer, and execution by the Trustee of assignment and transfer thereof under this trust, then the recitals

therein as to default and publication of notice of sale, and demand that such sale be made, postponement of sale, amount and terms of sale, purchaser, payment of purchase money, or any other fact or facts affecting the regularity and [73] validity of such sale, shall be conclusive proof of all facts recited in such assignment and transfer, and any such assignment and transfer with such recitals therein shall be effectual and conclusive against such defaulting Buyer and all other persons as to all facts recited therein; and the receipt for the purchase money contained in any assignment and transfer executed by the Trustee to the purchaser at any such sale as aforesaid shall be sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money.

**ELEVENTH:** Should a breach or default be made in payment of any of the sums secured hereby, or herein provided to be paid or repaid by the Buyers hereunder, or should they fail to perform any of their duties or obligations imposed upon them by the terms of this instrument, then the Trustee or the Sellers hereunder may declare all sums secured hereby immediately due and payable, and the Trustee is hereby authorized thereupon to sell the property aforesaid so held in trust in the manner hereinafter provided, and out of the proceeds realized from such sale, after paying the expenses thereof, including attorney's fees, to pay the amount of the unpaid remainder of said purchase

price of said property, together with the interest accrued and unpaid thereon, as hereinbefore mentioned, and secured hereby. Before making said sale the Trustee shall cause to be filed in the office of the County Recorder of Los Angeles County, California, a notice of such breach and default, and that the Seller elects to have the property described in this Declaration of Trust sold to satisfy the obligations secured hereunder, and three months after the filing of said notice, without demand on the Buyers or any of them, the Trustee may proceed to sell the property aforesaid or any portion thereof, for cash for the highest price which it is able to obtain, such sale being made in the following manner:

The Trustee shall first publish notice of the time and place of such sale with the description of said property so to be sold, [74] at least once each week for three successive weeks in some newspaper of general circulation printed in the City of Los Angeles, California, and notice of such sale shall be posted complying with the laws of California governing sales of real property under execution, and may from time to time postpone said sale by announcement at the time and place of sale fixed, or by re-publishing notice of sale in the same newspaper with the date of postponement attached thereto, in one issue only, prior to the date of the postponed sale, and on the date so announced or advertised, or any date to which such sale may be postponed, the Trustee may sell said property or

any portion thereof either en masse or in separate parcels, in its own discretion, at public auction, at which sale the Trustee or any party hereto may be a purchaser; and after such sale and payment made, the Trustee may execute and deliver a deed or deeds conveying the property so sold to the purchaser or purchasers thereof, but without covenant or warranty expressed or implied, whereupon such purchaser or purchasers shall be let into immediate possession of said property so sold, and all persons in possession thereof shall be deemed to be tenants at sufferance; and the recitals by the Trustee in any such deed or deeds of any or all facts or matters affecting the regularity or validity of any such sale shall be conclusive against all persons, including the Buyers and each of them and their successors in interest. Such sale, however, shall be made subject to any outstanding contracts theretofore made by the Trustee for the sale of respective lots aforesaid, but all moneys then remaining unpaid on said lots or any of them theretofore sold on contract shall become and be due and payable to the purchaser or purchasers of said lot or lots at such sale.

The Trustee, out of the proceeds of such sale shall pay:

(a) Expenses of said sale, including counsel fees and Trustee's fees herein provided for.

(b) All sums which have been paid or advanced under or in accordance with the provisions hereof, and not repaid, together with interest aforesaid accrued thereon. [75]



(c) The principal amount due and unpaid to the Seller herein, together with unpaid interest aforesaid accrued thereon.

(d) The remainder of such proceeds, if any, to the Buyers, their successors or assigns, according to their respective interests hereunder aforesaid.

**TWELFTH:** The Buyers shall pay to the Trustee the following fees and compensation for its acceptance of this Trust and for acting as Trustee hereunder:—

(a) An installation fee of Two Hundred (\$200.00) Dollars payable upon the acceptance hereof.

(b) \$5.00 for the preparation of each deed and \$5.00 for the preparation of each contract in each case covering one lot or parcel only.

(c) Collection charges from the sale price of said parcels which shall be as follows:—

Two per cent (2%) of the sale price where the payments do not exceed three in number. Where the payments do exceed three in number the collection fees shall be three per cent (3%) of the sale price. Like fees shall be paid on all interest collected.

**THIRTEENTH:** The Trustee hereby agrees to act under the terms of this instrument only upon the following conditions:

That except for its willful default or gross negligence it shall not be liable to anyone; when in its discretion it acts upon the advice of legal counsel, selected and employed by it in good faith, in accord-

ance with the opinion of such counsel, it shall not be liable for any result of such action; should it be called upon to perform unlooked for or unanticipated duties in connection with this Trust not herein specifically provided for, then in addition to the fees above provided for it shall receive a reasonable compensation for the performance and discharge of such duties; all fees to the Trustee provided for hereunder shall be deemed to be earned upon the execution [76] hereof; the Trustee assumes no obligation and shall be under no obligation whatsoever to pay for or on account of any of the Buyers, or said trust property, or to or for the account of anyone whomsoever, any moneys other than and as herein specifically provided, except at its option so to do; this trust shall not cease or terminate unless and until the Trustee shall have been paid in full all sums herein provided to be paid to it.

IN WITNESS WHEREOF the said TITLE GUARANTEE AND TRUST COMPANY has caused this instrument to be duly executed by its officers thereunto duly authorized under its corporate seal this ..... day of December, 1922.

TITLE GUARANTEE AND TRUST  
COMPANY

By A. F. MORLAN

[Seal]

Vice-President.

Attest: A. R. KILLGORE

Secretary. [77]

The above Declaration of Trust is hereby approved, ratified and confirmed by us and each of us as to all of its terms and provisions.

(Signed) JOHN W. MITCHELL  
ADINA MITCHELL

Seller

We hereby certify that the above Declaration of Trust fully sets out all of the terms and provisions thereof and we hereby ratify, approve and confirm the same in all its parts, and hereby respectively agree to do and perform all and everything therein provided to be done by us respectively.

LOS ANGELES STONE COMPANY  
By H. L. FERAUD 3/12

[Seal] President

Attest: GEO. H. CLARK  
Secretary

F. E. BUNDY

C. L. BUNDY

R. P. SHERMAN 3/12

By H. L. FERAUD,  
his attorney-in-fact

F. H. SIENER 2/12

Buyers.

Title Guarantee and Trust Company hereby certifies and declares that the foregoing is a full, true and correct copy of its Declaration of Trust #807.

TITLE GUARANTEE AND  
TRUST COMPANY

By .....

Secretary. [78]

EXHIBIT "D"  
DECLARATION OF TRUST  
Trust #822 "B"—

THIS DECLARATION OF TRUST made and entered into this 1st day of April, 1924,

WITNESSETH:—

THAT WHEREAS, TITLE GUARANTEE AND TRUST COMPANY has heretofore issued its certain Declarations of Trust #750, #807 and #822 respectively, and

WHEREAS said Trusts were declared to be the property of JOHN W. MITCHELL, and for the purpose of securing an indebtedness of Sixty-eight Thousand (\$68,000.00) Dollars in favor of L. C. BRAND, and to secure any additional moneys loaned or advanced by the said L. C. BRAND to the said JOHN W. MITCHELL, or for his benefit, or for the protection of the said Trusts or the said Trust property, and

WHEREAS the said L. C. BRAND has assigned the said note to the TITLE GUARANTEE AND TRUST COMPANY, and TITLE GUARANTEE AND TRUST COMPANY has, subsequent to the date hereof, loaned other sum or sums, and may from time to time hereafter loan other sum or sums to the said JOHN W. MITCHELL, and

WHEREAS it was the intention of JOHN W. MITCHELL and ADINA MITCHELL, his wife, that all of said properties should be held by them as joint tenants, with right of survivorship.

NOW THEREFORE THIS IS TO WITNESS that TITLE GUARANTEE AND TRUST COMPANY, at the request of JOHN W. MITCHELL and ADINA MITCHELL, his wife, declares that it holds the said Trusts and all assets thereof in Trust for JOHN W. MITCHELL and ADINA MITCHELL, his wife, as joint tenants, with right of survivorship, subject to all the terms of any assignment or assignments heretofore made to secure any indebtedness in favor of L. C. BRAND, with additional provisions [79] that the said Trusts shall also secure any indebtedness of the TITLE GUARANTEE AND TRUST COMPANY, and further, the parties hereto hereby assign to TITLE GUARANTEE AND TRUST COMPANY all notes in favor of JOHN W. MITCHELL given as part of the purchase price on the sale of properties covered by said Trusts, and in event of a default in the payment of any indebtedness in favor of L. C. BRAND, or TITLE GUARANTEE AND TRUST COMPANY, of any kind or nature, or for any purpose whatsoever, it is a provision hereof that the Trustee may sell the interests of JOHN W. MITCHELL and ADINA MITCHELL, his wife, in and to said Trusts or trust deeds as herein provided, and without the necessity of making demand on the said parties, or the survivor thereof, which said sale shall be in the following manner, namely:—

Said Trustee shall publish notice of the time and place of such sale, with a description of the interest in said Trust to be sold at least once a week for

four successive weeks in some newspaper published in the City of Los Angeles, California, and may from time to time postpone such sale by publication of a notice of postponement in the same newspaper at least once each week prior to the date of the sale fixed by said notice of postponement, or at its option, by public announcement thereof at the time and place of sale so advertised; and on the day of sale so fixed said Trustee may sell said interest or any portion thereof at public auction to the highest bidder for cash in gold coin, and after such sale and after due payment made, said Trustee shall execute and deliver to the purchaser or purchasers an assignment or assignments of the interest or interests in said Trust so sold to such purchaser or purchasers, subject to all of the terms and conditions thereof.

AND out of the proceeds of such sale or sales shall pay:

First: The costs, fees, charges and expenses of such sale.

Second: The amount due and unpaid on said note with [80] interest accrued thereon.

Third: Any additional sums, with interest accrued thereon, borrowed by said Assignors from said Payee, evidenced by another note or notes as hereinbefore provided.

And lastly, the balance, if any, to the order of the said Assignors.

In the event of a sale of said interest or any part thereof, and the execution of an assignment or assignments therefor, then the recitals therein of de-

fault, publication of notice of sale, demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money and any other fact affecting the regularity or validity of such sale shall be conclusive proof of such facts.

Demand, presentment, notice, protest and notice of protest are hereby waived.

IN WITNESS WHEREOF we have hereunto set our hands and seals the day and year first above mentioned.

JOHN W. MITCHELL  
ADINA MITCHELL

The above assignment is hereby approved in all its parts.

L. C. BRAND

Title Guarantee and Trust Company hereby accepts the above Assignment and agrees to be governed by all of the terms hereof.

TITLE GUARANTEE AND  
TRUST COMPANY  
BY A. R. KILLGORE  
Secretary [81]

This is to certify that the foregoing is a true, perfect and complete copy of the Declaration of Trust on file in the office of the Title Guarantee and Trust Company.

TITLE GUARANTEE AND  
TRUST COMPANY  
By E. D. REIMUS  
Vice-President [82]

EXHIBIT "E"

Treasury Department  
 Internal Revenue Service  
 Form 706—Revised May, 1926

RETURN FOR FEDERAL ESTATE TAX

(Not to be filled in by taxpayer)

Time to file return extended Collection District.....  
 Bureau File No..... by Commissioner to .....  
 By Collector to.....

Collector of Internal Revenue will stamp here date  
 return filed.

Assessments

Amount	List	Page	Line
.....	.....	.....	.....

Payments

Date	Principal	Interest
.....	.....	.....

Tentative findings, \$..... Date..... By.....  
 Determined, \$..... Date..... By.....  
 Redetermined, \$..... Date..... By.....

Assessments

Payments

Amount of deficiency, exclusive of interest	Interest on deficiency from due date of tax to date of assessment	List Page Line	Date	Amount of deficiency, exclusive of interest	Interest assessed on deficiency from due date to date of assessment	All other interest	Adjustments
.....	.....	.....	.....	.....	.....	.....	.....

An itemized inventory by schedule of the gross estate of decedent, with legal deductions to be filed in duplicate.



Decedent's name John W. Mitchell Date of death July 2, 1925 Residence at time of death 1007 Ocean Boulevard, Coronado, California.

General Instructions—Read with care

1. The return is required for the estate of every resident decedent who died after the effective date of the Revenue Act of 1926 and the value of whose gross estate at the date of death exceeded \$100,000, for the estate of every resident decedent who died prior to such date whose gross estate exceeded \$50,000, and for the estate of every non-resident decedent any part of whose gross estate was at the date of death situated (within the meaning of the statute) in the United States. The term "United States" means only the States, Territories of Alaska and Hawaii, and the District of Columbia.

2. The return is due one year after the date of death. **THE RETURN** for a **RESIDENT DECEDENT** should be filed with the collector of the district in which such decedent was domiciled at the time of death. **THE RETURN** for a **NONRESIDENT DECEDENT** should be filed with the United States Collector of Internal Revenue of the district in which the gross estate was situated, or, if situated within more than one district, or if the gross estate consisted wholly of stock in a domestic corporation, then with the Collector of Internal Revenue for the Second New York District, New York, N. Y., or with such other collector as the Commissioner may designate.

3. Remittance in payment of the tax should be made payable to "Collector of Internal Revenue at .....,," naming city in which the office of the collector with whom the return is filed is located.

4. Regulations 70, 1926 Edition, should be carefully studied before making out the return, and if the decedent died prior to 10.25 a.m., Washington, D. C., time, February 26, 1926, reference should be made to Article 110 of such regulations.

5. All papers used in preparing the return should be carefully preserved for reference or inspection. All estate tax returns are verified by an Internal Revenue officer before the tax is determined by the Bureau.

6. If the decedent was a resident and left a will, two copies thereof, one of them certified, must be filed with the return. In the case of the estate of a NONRESIDENT, there should be filed with the return—

- (a) A certified copy of the will, if decedent died testate, or of each will, if decedent left more than one to govern in different jurisdictions.
- (b) A certified copy of inventory of the complete gross estate, whether situated within or without the United States, if any deductions are claimed. In such case separate schedules should be made for property within and without the United States.
- (c) A certified copy of schedule of debts and expenses allowed, if deduction thereof is

claimed. If certified copy of inventory of all property outside the United States is filed with the return, such property need not be entered under the respective schedules of the return. See article 52, Regulations 70, 1926 Edition.

7. This form consists of cover sheets, general information sheet, and fifteen schedules. Care should be taken to see that the return is complete and that all schedules are included in the proper order.

In the estate of a resident the various items comprising the gross estate must be set forth upon the schedules provided.

8. The questions asked under each schedule should be specifically answered, and if the decedent owned no property of any class specified under the schedule, the word "None" should be written across the schedule.

9. If there is not sufficient space for all entries under any schedule, use additional sheets of the same size, numbering them consecutively, as, for example, Schedule A-1, A-2, etc., and insert them in the proper order in the return.

10. Further instructions will be found under each schedule. If instructions are carefully observed, it will greatly assist the estate and the Bureau in the final determination of the tax liability.

11. **PENALTIES.**—For penalties for failure to file return when due, keep records, and supply in-

formation, or for the preparation or presentation or the aiding or assisting in the preparation or presentation of a false or fraudulent return, affidavit, claim, or document, see Sections 320, 1103, 1114 of the Revenue Act of 1926.

### GENERAL INFORMATION SHEET

The information called for on this page is necessary for purposes of record and verification. Fill out all blanks carefully and completely.

The names of the decedent's legal heirs and next of kin, or if decedent left a will, the names of the beneficiaries thereunder, are required to be stated. If there are more than ten, only the names of the ten principal ones are required.

Did decedent die testate? (Answer "Yes" or "No.") Yes. If testate, two copies, one of them certified, of the last will must be filed with the return, unless the decedent was a nonresident, in which case but one copy, certified, is required.

Permanent residence at time of death: Coronado, California.

Actual place of death: Coronado, California.

Age at death: 63.

Cause of death:

How long ill:

Business or employment: Attorney-at-law—Retired.

Business address:

Was decedent married or single at date of death?:

Married. Widow?: Widower?:

State number of children, if any: None.

HEIRS, NEXT OF KIN, DEVISEES  
AND LEGATEES

Name	Relationship	Address
Adina Mitchell	Wife	1063 Ocean Blvd., Coronado, California.

Names of decedent's physicians: Decedent was attended by a Christian Science Practitioner. Fred W. Decker.

Address: First Natl. Bk. Bldg., San Diego, Cal.

Names of physicians and nurses who attended decedent during last illness: Mrs. Jane M. Johnson.

Address: [84]

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Estate of John W. Mitchell District of California

## GROSS ESTATE

## SCHEDULE A

## REAL ESTATE

## Instructions

Article 12 of Regulations 70, 1926 Edition, should be read before preparing this schedule.

Real estate should be so described that it may be readily located. The legal description is not required unless necessary to show the exact location. The character of the buildings should be stated and the character and area of unimproved land. For location, such details as the following may be necessary:

City or Town Property.—Street and number, ward, subdivision, block and lot, etc.

Rural Property.—Township, range, block and lot, street, landmarks, etc.

If any item of real estate is subject to mortgage, the unpaid balance of the mortgage should be shown below under "Description." The full value of the property and not the equity must be extended in the value column. The mortgage should be deducted under Schedule J of this return.

The value of dower, curtesy, or a statutory estate created in lieu thereof, is taxable, and no reduction on account thereof should be made in returning the value of the real estate.

All rents accrued and unpaid should be apportioned to the date of death whether due at that time or not.

For further instructions see Articles 10 to 13, inclusive, Regulations No. 70, 1926 Edition.

Did the decedent, at the time of death, own any real estate? (Answer "Yes" or "No.") .....

Item No.	Description	Assessed value for year of decedent's death \$	Fair market value at date of decedent's death \$	Rents accrued to date of death \$
1	Lot 13, Block 13, Coronado Beach, South Island, as per map 869 in the office of the County Recorder of San Diego Co.	8,000.00	30,000.00	None
2	A portion of Lots 9, 10, 11, 12, 13, 14 and 15, Block 5, Coronado Beach, South Island, according to deed from N. Gardner et ux to John W Mitchell (Note: this parcel has been sold under order of court during probate of this estate.)	3,105.00	6,000.00	None
3	Lots 1, 2, 3, 4, 5, 22, 23, 24, 25, 26, 27 and 28, Block 13, Coronado Beach, South Island	42,600.00	160,000.00	None
4	NE 1/4 of the SE 1/4, S 1/2 of the SE 1/4 of Sec. 1; W 1/2 of the NE 1/4 and the W 352.7 feet of the N 201 feet of the NE 1/4 of the NE 1/4 of Sec. 12, all in Twp. 14 S., R 1 W, S.B.M., in the County of San Diego	730.00	15,000.00	None
5	A strip of land in the City of Santa Monica, Calif., 1718.61 feet in length and containing approximately 1.64 acres, as per detailed description attached		53,700.00	None
Totals .....			\$264,700.00	\$.....

SCHEDULE B.  
STOCKS AND BONDS.

INSTRUCTIONS.

Give a complete description of all securities.

Stocks.—State the number of shares, common or preferred, par value, and quotation at which returned, exact title of corporation, and, if the stock is unlisted, the location of the principal business office. If a listed security, state principal exchange upon which sold.

Examples: 10 shares American Car & Foundry Co., preferred, par \$100, at 98, New York Exchange. 10 shares Eagle Manufacturing Co., Red Bank, N. J., common, par \$25, at 30, unlisted.

Bonds.—State quantity and denomination, *exact title*, kind of bond, interest rate, interest and due dates. State the exchange upon which listed or the principal business office of the company, if unlisted.

Example: Ten \$1,000 Baltimore and Ohio Railway Co. first mortgage 4 per cent registered 50-year gold bonds, due 1948. January, April, July, and October, at 96, New York Exchange.

*Listed stocks and bonds* should be returned at the mean between the highest and lowest quoted selling price upon the date of death, or if there were no sales on day of death, then at the mean between the highest and lowest sales on the nearest date thereto, if within a reasonable period. If death occurred on a Sunday or holiday quotations of the nearest previous day should be used; if listed on



several exchanges, quotations of the principal exchange should be employed.

If actual sales are not available and the stock is quoted on a bid and asked basis, the bid as of date of death should be taken.

*Unlisted securities* which are dealt in actively by brokers or have an active market should be returned at the sale price as of the date of death or the nearest date thereto, if within a reasonable period either before or after death. Only sales in the normal course of business should be employed. Where no such sale occurred the nearest bid should be used, if within a reasonable period either before or after death.

*Inactive stock and stock in close corporations* should be valued upon the basis of the company's net worth, earning and dividend paying capacity, general market conditions, and special conditions affecting the particular company, its future prospects, [illegible] all other factors having a bearing upon the value of the stock. The financial and other data upon which the estate bases its [illegible] ation should be submitted with the return.

*Securities returned as of no value*, nominal value, or obsolete, should be listed last, and the address of the company and the State and date of incorporation should be stated. Correspondence or statements used as the basis for return at no value should be retained for inspection.

*Interest on bonds* should be apportioned to the date of death and returned in the interest column.

Dividends upon stock declared prior to death, and payable after date of death, must be returned separately in the interest column unless reflected in the price at which the stock is returned.

In estates of nonresidents there should be listed in this schedule all stocks and bonds physically in the United States at date of death (as to meaning of the term "United States" see paragraph numbered "1" on the first page of this form), and the actual depository on that date should be shown. In such estates there should also be listed in this schedule the stocks of all corporations and associations created or organized in the United States. The foregoing requirements of this paragraph should be complied with, even though an inventory of the entire gross estate wherever situated is filed with the return.

Paragraph 3 of Article 13, and Article 12, regulations No. 70, 1926 Edition, should be carefully reviewed before preparing this schedule.

Did the decedent, at the time of death, own any stocks or bonds? (Answer "Yes" or "No.") Yes

If a resident decedent owned any stocks or bonds at the date of his death, they should be entered on pages 5 and 6. If the decedent was a nonresident there should be entered on pages 5 and 6, such stocks and bonds subject to tax as above indicated.

Estate of John W. Mitchell

District of California

SCHEDULE B—Continued

INSTRUCTIONS

For detailed instructions regarding the method of valuing stocks and bonds, see the preceding page.

Item No.	Description	Fair market value at date of death	Interest or dividends
	51 shares of the Capital Stock of Central Investment Co. of Los Angeles	\$4896.00	\$
	10 shares of the Capital Stock of First National Bank of Los Angeles	3860.00	
		8756.00	
Totals	.....	\$.....	\$.....
Grand Total	.....	\$.....	\$.....
Amounts Carried Forward	.....	\$.....	\$.....

(Continued on page 6)

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Estate of..... District of.....

SCHEDULE B—Continued

For Instructions see Page 4

Item No.	Description	Fair market value at date of death	Interest or dividends
	Amounts brought forward.....	\$.....	\$.....
Totals	.....	\$.....	\$.....
Grand Total	.....	\$.....	\$.....

(If more space is needed, insert additional sheets of same size)

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Estate of John W. Mitchell. District of California.

SCHEDULE C

Mortgages, Notes, Cash, and Insurance

---

INSTRUCTIONS

Article 12 of Regulations 70, 1926 Edition, should be read before preparing this schedule.

The four classes of property on this schedule should be listed separately in the order given.

Mortgages.—State (1) face value and unpaid balance, (2) date of mortgage, (3) name of maker, (4) property mortgaged, (5) interest dates and rate of interest, and (6) amount of unpaid interest. For example: Bond and mortgage for \$5,000, unpaid balance \$4,000; dated January 1, 1923, John Doe to Richard Roe; premises 22 Clinton St., Newark, N. J.; interest payable at 6 per cent per annum January 1 and July 1; interest paid to January 1, 1924; unpaid interest \$30.

Notes, Promissory.—Give similar data.

Cash in Possession.—List separately from bank deposits.

Cash in Bank.—Name bank and address, amount in each bank, serial number and nature of account, stating whether checking, savings, time deposit, etc. Include accrued interest in income column, or indicate if included in total on deposit. If statements are obtained from banks they should be retained for inspection by an internal-revenue agent.

Insurance.—The proceeds of all life insurance to whomsoever payable must be returned regardless of

value. Insurance payable to the estate must be returned first. State (1) name of company, (2) number of policy, (3) name of beneficiary. Include full amount receivable.

Important.—If there is insurance payable to beneficiaries other than the estate, deduction may be taken at bottom of this page equal to the amount returned for such insurance, but not exceeding \$40,000.

If decedent was a nonresident, and died subsequent to 3.55 p. m. November 23, 1921, Washington, D. C., time, insurance on his life need not be included as a part of his gross estate. Neither should bank accounts situated in this country be included where the nonresident decedent died subsequent to said date unless decedent was doing business in the United States. All [illegible] concerning such an account should be reported where it is contended that the account is not taxable.

For further instructions see articles 25 to 28, inclusive, Regulations No. 70, 1926 Edition.

- (1) Did the decedent, at the time of his death, own any mortgages, notes, or cash? (Answer "Yes" or "No.") Yes.
- (2) Was any insurance on life of decedent receivable by his estate? (Answer "Yes" or "No.") No.
- (3) Was any insurance on life of decedent receivable by beneficiaries other than the estate? Answer "Yes" or "No.") No.

Item No.	Description	Fair market value at date of death	Income or interest accrued to date of death
	Cash in possession Title Guarantee and Trust Co. of Los Angeles, as trustee.	\$ 81,148.75	\$
	A note of F. A. Hartwell secured by a deed of trust of certain real property, which is of record in the office of the County Recorder of Los Angeles County, on which there was unpaid at the date of death, (interest included)	77,767.50	
	A note of F. A. Hartwell secured by a deed of trust of certain real property, which is of record in the office of the County Recorder of Los Angeles County, on which there was unpaid at the date of death, (interest included)	289,434.50	
	A note of Los Angeles Stone Co., et al, secured by a deed of trust of certain real property, which is of record in the office of the Co. Recorder L. A. Co.	43,609.67	
	Total.....	\$491,960.42	
	Less amount of insurance receivable by beneficiaries, other than the estate, not in excess of \$40,000.....	\$.....	
	Totals .....	\$.....	\$.....
	Grand Total .....	491,960.42	\$.....

(If more space is needed, insert additional sheet of same size

Estate of..... District of.....

SCHEDULE D-1  
Jointly Owned Property

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INSTRUCTIONS

Article 12 of Regulations 70, 1926 Edition, should be read before preparing this schedule.

All property of whatever kind or character, whether real estate, personal property, bank accounts, etc., in which the decedent held at the time of his death an interest either as a joint tenant or as a tenant by the entirety, must be returned under this schedule.

The full value of the property must be included in the fourth column, unless it can be shown that a part of the property originally belonged to the other tenant or tenants and was never received or acquired by the latter from the decedent for less than a fair consideration in money or money's worth. (See section 302 (e) of act approved Feb. 26, 1926, and articles 22 and 23, Regulations No. 70, 1926 Edition.)

Where it is shown that the property or any part thereof, or any part of the consideration with which the property was purchased, was acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth, there should be omitted from this schedule only so much of the value of the property as is proportionate to the consideration furnished by such other tenant or tenants.

Where the property was acquired by gift, bequest, devise, or inheritance by the decedent and spouse as tenants by the entirety, then only one-half of the value of the property should be listed on this schedule. Where the property was acquired by the decedent and another person or persons by gift, bequest, devise, or inheritance as joint tenants, and their interests are not otherwise specified or fixed by law, then there should be entered on this schedule only such fractional part of the value of the property as is obtained by dividing the full value of the property by the number of joint tenants.

If the executor contends that less than the value of the entire property is includable in the gross estate for purposes of the tax, the burden is upon him to show his right to include such lesser value, and in such case he should make proof of the extent, origin, and nature of the decedent's interest and the interest of decedent's cotenant or cotenants.

If the property consist of real estate, the assessed value thereof for the year of death should be shown in the second column, headed "Description of property." In the third column should be entered the fair market value of the whole property, even though only a fractional part thereof is returnable in column 4. In the fourth column should be entered the amount to be included in the gross estate pursuant to the instructions given above. In the fifth column should be entered the rents, interest, and other income accrued to the date of decedent's death in the



same proportion as the amount entered in column 4 bears to the amount entered in column 3.

Property in which the decedent held an interest as a tenant in common should not be listed here, but the value of his interest therein should be returned under Schedule A, if real estate, or if personal property, under the appropriate schedule. The value of the decedent's interest in partnerships should not be included here, but under Schedule D-2, on the following page, designated as "Other Miscellaneous Property."

Item No.	Description of property	Fair market value of the property at date of decedent's death	Amount to be included in gross estate	Rents and other income accrued to date of death
	Joint account of deceased and Adina Mitchell, as joint tenants with the right of survivorship, in the First National Bank of San Diego,	\$5,612.95	\$	\$
	Totals .....		\$.....	\$.....
	Grand Total .....			\$.....

(If more space is needed, insert additional sheets of same size)

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Estate of John W. Mitchell. District of California.

### SCHEDULE D-2

#### Other Miscellaneous Property

#### INSTRUCTIONS

Article 12 of Regulations 70, 1926 Edition, should be read before preparing this schedule.

Under this schedule include all items of gross estate not returned under another schedule, includ-

ing the following: Debts due the decedent; interests in business; claims, rights, royalties, pensions; leaseholds, judgments, shares in trust funds or in estates of decedents who died more than five years prior to the present decedent's death, or in estates of decedents who died within five years prior to the present decedent's death where the share therein is not reported on schedule G, or on another schedule of this return; household goods and personal effects, including wearing apparel; farm products and growing crops; livestock, farm machinery, automobiles, etc.

When an interest in a copartnership or unincorporated business is returned, submit in duplicate statement of assets and liabilities as of date of death and for the five years preceding death, and statement of the net earnings for the same five years. Good will must be accounted for. In general, the same information should be furnished and the same methods followed as in valuing close corporations.

In listing automobiles give make, model, year, and condition as of date of decedent's death.

Did the decedent, at the time of his death, own any interest in a copartnership or unincorporated business? (Answer "Yes" or "No.") No.

Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? (Answer "Yes" or "No.") Yes.

Item No.	Description	Fair market value at date of death	Interest and other income accrued to date of death
	Paintings, as appraised by E. H. Furman per affidavit attached hereto,	\$112,570.00	\$
	Statuary,	2,500.00	
	Miscellaneous furniture, library and piano in art gallery,	5,000.00	
	Pierce-Arrow Enclosed Drive Limousine, 1923 Model	3,500.00	
	Chrysler Brougham, 1924 Model	1,000.00	
	Regular membership in Hollywood Country Club	250.00	
	Regular membership in Los Angeles Tennis Club,	100.00	
	Totals .....	\$124,920.00	\$.....
	Grand Total .....		\$.....

(If more space is needed, insert additional sheets of same size)

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Estate of..... District of.....

**SCHEDULE E**

**Transfers**

**INSTRUCTIONS**

Article 12 of Regulations 70, 1926 Edition, should be read before preparing this schedule.

All gifts or transfers, by trusts or otherwise, made or created by the decedent, regardless of the date thereof, in contemplation of, or intended to take effect in possession or employment at or after death, other than bona fide sales for an adequate and full consideration in money or money's worth, are subject to the tax and must be returned under this

schedule and the value of the property entered in the fourth column.

Transfers made by the decedent in his lifetime, other than as bona fide sales for an adequate and session or enjoyment at or after death, excepting bona fide sales for an adequate and full consideration in money or money's worth, must be returned for tax or disclosed in the return as follows:

1. TRANSFERS MADE IN CONTEMPLATION OF DEATH.—The executor must return for tax the value as of the date of decedent's death of all property transferred by the decedent at any time in contemplation of death.
2. TRANSFERS NOT ADMITTED TO HAVE BEEN MADE IN CONTEMPLATION OF DEATH.—(a) the executor is required to disclose in the return all transfers made at any time by the decedent of an amount or value of \$5,000 or more. Any such transfer made within two years of decedent's death, but before the effective date of the Revenue Act of 1926, and constituting a material part of decedent's property and in the nature of a final disposition or distribution thereof, is deemed to have been made in contemplation of death within the meaning of the statute. Where the executor contends that the transfer was not made in contemplation of death, he must file with the return sworn statements in duplicate of all the material facts including, among other things,

the decedent's motive in making the transfers, his mental and physical condition at that time, and one copy of the death certificate. (b) The executor is required to return for tax all transfers made by the decedent within two years prior to his death but after the effective date of the Revenue Act of 1926, to the extent that the value thereof to any one person is in excess of \$5,000 even though the transfer is not admitted to have been made in contemplation of death. The entire value of the transfer should be disclosed in the return.

All property transferred, by the decedent during his lifetime, except bona fide sales for an adequate and full consideration in money or money's worth, constitutes a part of the gross estate if at the time of the decedent's death the enjoyment thereof was subject to any change through the exercise of a power to alter, amend or revoke, either by the decedent alone or in conjunction with any person. Where property was so transferred and the decedent, in contemplation of death, relinquished the power to alter, amend, or revoke the transfer, the transfer is subject to tax, and the value of the property must be included in columns 3 and 4 of this schedule.

Where the transfer was effected by an instrument in writing, two copies of such instrument should be filed with the return, one copy of which must be certified or verified, unless the decedent was a non-

resident, in which case but one copy, certified or verified, need be filed.

[Illegible] of transferee, date and form of transfer, description of property, and fair market value at time of death should be set forth in this schedule. For further [illegible] see articles 15 to 21, inclusive, Regulations No. 70, 1926 Edition.

[Illegible] the decedent, at any time during his life, make any transfer in contemplation of or intended to take effect in possession or enjoyment or after his death, other than by bona fide sale for an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.")  
No.

(2) Did the decedent, within two years immediately preceding his death, make any transfer of a material part of his property without an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.")  
No.

(3) Did the decedent, within two years immediately preceding his death, make any transfer of an amount or value equal to or exceeding \$5,000 without an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.") No.

(4) Did the decedent, at any time, make a transfer of a material part of his property without an adequate and full consideration in money or money's worth, but not believed to have been in contemplation of death or intended to take effect

in possession or enjoyment at or after his death?  
(Answer "Yes" or "No.") No.

- (5) If the answer to question (4) is "Yes," state date, amount or value, and motive which actuated the decedent in making the transfer or transfers:
- .....
- .....
- .....
- .....

[Illegible] the decedent, at the time of his death, possess the right (either alone or in conjunction with any person), to change [illegible] through the exercise of a power to alter, amend, or revoke the transfer of any property previously made by him? (Answer "Yes" or "No.")  
No.

[Illegible] Did the decedent, at any time during his life, relinquish in contemplation of his death the power to alter, amend, or revoke any transfer previously made by him? (Answer "Yes" or "No.") No.

- (8) If the answer to either question (6) or (7), or both of them, is "Yes," the value of the property transferred must be entered in column 4 for inclusion in the gross estate.
- (9) Were there in existence at the time of the decedent's death any trusts created by him during his lifetime? (Answer "Yes" or "No.") Yes.

Item No.	Description of property transferred, and details of transfer	Fair market value at date of death	Fair market value to be included in gross estate	Rents or other income accrued to date of death
		\$	\$	\$
	Further answering question No. 9, the decedent in his lifetime created trusts with the Title Guarantee and Trust Co., of Los Angeles as trustee, being trusts Nos. 750, 807 and 822, for the purpose of subdividing, selling and managing certain real property and collecting the sale price thereof, but all such property included in said trusts has been reported herein.			
	Totals .....		\$.....	\$.....
	Grand Total .....		\$.....	\$.....
	Amounts Carried Forward.....		\$.....	\$.....

(Continued on following page)

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Estate of..... District of.....

## SCHEDULE E—Continued

For Instructions—See Page 10

Item No.	Description of property transferred and details of transfer	Fair market value at date of death	Fair market value to be included in gross estate	Rents and other income accrued to date of death
	Amounts brought forward.....	\$	\$	\$
	Totals .....		\$.....	\$.....
	Grand Total .....		\$.....	\$.....

(If more space is needed, insert additional sheets of same size)

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Estate of..... District of.....

## SCHEDULE F

## Powers of Appointment

## INSTRUCTIONS

Article 12 of Regulations 70, 1926 Edition, should be read before preparing this schedule.

Property passing under a general power of appointment exercised in the decedent's will must be returned. If the decedent exercised a general power by deed, the value of the property must be included in the gross estate if the deed was made in contemplation of death or intended to take effect in possession or enjoyment at or after death, except where executed for an adequate and full consideration in money or money's worth.

Duplicate copies of the will or deed conferring the power upon the decedent, and of the instrument by which the power was exercised, must be filed with the return, and one copy of such will, deed and instrument must be duly certified or verified, unless the decedent was a nonresident, in which case but one copy of each of the documents referred to, certified or verified, need be filed. This should be done even though it is contended that the power was a limited one and the property passing thereunder is not returned as taxable.

Property passing under the exercise of a power of appointment should not be listed under any other schedule.

For further instructions see Article 24, Regulation No. 70, 1926 Edition.

- (1) Did the decedent, at any time, by will or otherwise, transfer property by the exercise of a general power of appointment? (Answer "Yes" or "No.") No.
- (2) Did the decedent, at any time, by will or otherwise, exercise a limited power of appointment? (Answer "Yes" or "No.") No.

Item No.	Description and details	Fair market value at date of death	Rents and other income accrued to date of death
		\$	\$
Totals	.....	\$.....	\$.....
Grand Total	.....	\$.....	\$.....

(If more space is needed, insert additional sheets of same size)

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Estate of..... District of.....

### SCHEDULE G

Property Identified as Previously Taxed

### INSTRUCTIONS

Before executing this schedule read carefully articles 41 to 43, inclusive, and 53, Regulations 70, 1926 Edition.

Property identified as received from a donor or a prior decedent within five years prior to the present decedent's death or acquired in exchange for such property, must be included in this schedule at the value at the date of the present decedent's death whether greater or less than the value as included in the donor's gift tax return, or in the return for the prior decedent, and deduction taken

under Schedule K. The deduction is limited to the identical property received or property identified as acquired by first exchange of such property. No deduction is permitted for property acquired by a second or subsequent exchange.

Where property identified as acquired by first exchange is returned, it must be listed in such manner as to indicate that fact and to show the original property received from the donor or the prior decedent.

If property is acquired by exchange, the full value thereof at the date of the present decedent's death must be entered in this schedule and carried forward to the recapitulation of the gross estate, even though the present decedent gave additional valuable consideration over and above the value of the property given in the exchange.

Unless property can be clearly identified and the full tax due from the donor or prior estate has been paid, the deduction can not be taken. The burden of proof rests upon the person claiming the deduction.

Where properties listed on this schedule were received from more than one donor or prior decedent, set out separately the property received from each, and give with respect to each donor or prior decedent the information called for immediately below.

**Donor or Prior Decedent**

Name of donor or prior decedent.....

(Strike out words not applicable)

If a decedent, show date of death, or if a donor,  
show calendar year in which gift to this decedent  
was made .....

Residence of donor at time of gift, or of decedent at  
time of death .....

Name and address of administrator or executor of  
prior decedent .....

Return was filed with Collector at.....

Item No.	Description	Fair market value at date of present decedent's death	Rents and other income accrued to date of present decedent's death
		\$	\$
	Totals .....	\$.....	\$.....
	Grand Total to be Included in the Gross Estate.....		\$.....

(If more space is needed, insert additional sheets of same size)

SCHEDULE H—EXPENSES OF ADMINISTRATION—Continued.

Amount brought forward,		\$28,467.27
Insurance premiums on policies covering property of the estate,		1,320.50
Interest paid on notes and mortgages of the deceased during the administration of the estate to date:		
Southern Trust & Commerce Bank (Daniels Mtg.)	\$1,030.00	
Prudential Bond and Mtg. Co. (Mtg. & Tr. Deed)	569.10	
First Nat. Bank of San Diego (Unsecured notes)	2,368.94	3,968.04
		<hr/>
Care and maintenance of property at 1007 Ocean Blvd., Coronado, (Parcel 1, Schedule A) to July 1, 1926		1,546.54
Care and maintenance of Bradley Springs Ranch, (Parcel 4, Schedule A) to July 1, 1926,		2,156.82
		<hr/>
		\$37,459.17

Note: This estate will not be closed before two years from the date of death of the deceased, (July 2, 1925) on account of pending collections necessary to pay debts, and other pending matters, and the time required to close it may even be longer than this estimate. It is, therefore, impossible to give the expenses of administration which may be

allowed the Executrix on final settlement of her accounts, at this time. The Executrix therefore reserves the right to include further expenses as they accrue, to be reported in an amended and supplemental return, and to be accounted for in the final settlement of the tax due in this estate. [96]

Estate of John W. Mitchell, District of California.

## DEDUCTIONS

### SCHEDULE H

#### Funeral and Administration Expenses

---

#### INSTRUCTIONS

Funeral expenses and administration expenses should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. Preserve all vouchers and receipts for inspection by an internal revenue agent.

No deduction may be taken upon the basis of a vague or uncertain estimate.

Executors' or administrators' commissions should be entered in such amount as has actually been paid, or which it is reasonably expected will be paid, not to exceed the amount allowable by the laws of the jurisdiction wherein the estate is administered, and not in excess of the amount usually allowed in cases similar to that of this estate. Where the commissions have not been awarded by the court, their deduction on final audit is discretionary with the Commissioner, subject to future adjustment.

Attorneys' fees should be deducted in the amount paid, or to be paid. If the fees have not been paid at the time of the [illegible], their deduction is discretionary with the Commissioner, subject to future adjustment.

Estate, legacy, succession, and inheritance taxes, and taxes on income received after death, are not deductible. Credit to a limited extent may be taken for estate, legacy, succession, inheritance and gift taxes, provided the conditions named in article [illegible] Regulations 70, 1926 Edition, are fully met.

For further instructions see Articles 9, 29 to 35, inclusive, and 52, Regulations No. 70, 1926 Edition.

Item No.	Amount of item	Totals
Funeral expenses:		
Johnson-Saum Co., undertakers, San Diego	\$755.30	\$
Pierce Bros Co., undertakers, Los Angeles	72.70	
Rosedale Cemetery Association,	12.50	
Reader at Funeral services,	10.00	
Soloist at funeral services,	10.00	
	<hr/>	<hr/>
Total Funeral Expenses.....	860.50	\$ 860.50
Executor's commission, estimated, xxx .....	\$11500.00	
(Strike out words not applicable)		
Attorney's fee, estimated, xxx .....	\$11500.00	
(Strike out words not applicable)		
Miscellaneous administration expenses:		
Publication notice to creditors	6.00	
Clerk's filing and miscellaneous fees,	9.00	
Publication notice of probate of will,	6.00	
Publication notice of sale real estate	22.75	
Appraisers: Frank Smith	25.00	
Charles Eaton,	150.00	
John Burnham,	150.00	
Edwin N. Goodwin,	218.00	
Clerk's fees on sale real estate,	1.80	
Commission paid Mark Vilim on sale real est.	300.00	
Title charges, taxes, etc., to pass title on sale	120.79	
Taxes, County of San Diego	2582.04	
Taxes, City of Coronado	1875.89	
Total Administration Expenses.....		\$.....
Grand Total Forward to next page \$	28467.27	\$.....

(If more space is needed, insert additional sheets of same size)



Estate of John W. Mitchell. District of California

## SCHEDULE I

### Debts of Decedent

### INSTRUCTIONS

Itemize fully below all valid debts of the decedent owing by him at the time of death.

If deduction is claimed for a debt, the amount of which is disputed or the subject of litigation, only such amount may be deducted as the estate concedes to be a valid claim. If the claim is contested, that fact should be stated.

Enter in this schedule notes unsecured by mortgage and give full details, including name of payee, face and unpaid balance, date and term of note, interest rate and date to which interest was paid prior to death.

Care must be taken to state the exact nature of the claim as well as the name of the creditor. If the claim is for services rendered over a period of time, state the period covered by the claim. Example: Edison Electric Illuminating Company for electric service during December, 1923, \$25.

All Vouchers or Original Records should be preserved for inspection by an internal revenue agent.

For further instructions see Articles 29, 30, 36, 37, and 52, Regulations No. 70, 1926 Edition.

Item No.	Creditor and nature of claim	Amount
	The following claims have been allowed by the Superior Court of the County of San Diego, in proceedings for the administration of said estate:	
	First National Bank of San Diego, including interest to date of death of decedent,	\$ 50,548.18
	Earl L. Standahl,	1,490.00
	Seol and Chapman,	176.80
	MacGruer and Simpson,	70,000.00
	Curtis Studio,	200.00
	Gardner-Payne Co.,	788.00
	Kirk, Roche Co.,	236.13
	Louis J. Gill,	1,230.00
	Francisco Cornejo,	100.00
	Kirk and Kelly	115.81
	A. McArthur,	142.32
	Southern Electric Co.,	436.95
	Cannell and Chaffin,	10,519.83
	Fred Wieland,	160.00
	Hersom and Clark,	250.00
	Title Guarantee and Trust Co., including interest to date of death of decedent,	65,568.75
	Adina Mitchell,	971.84
		<hr/>
		202,934.61
	Total.....	\$.....

(If more space is needed, insert additional sheets of same size)

Estate of.....District of.....

## SCHEDULE J

Mortgages, Net Losses, and Support of Dependents

## INSTRUCTIONS

Mortgages.—Give location of property, name of mortgagee, date and term of mortgage, face amount, unpaid balance, rate of interest, date to which interest was paid prior to death. Identify by item number, as listed in Schedule A, the property securing each mortgage. Enter in fourth column accrued interest accrued to date of death. Mortgages upon, or any indebtedness in respect to, property included in the gross estate is deductible only to the extent that the liability for the mortgage or indebtedness was incurred or contracted bona fide and for an adequate and full consideration in money or money's worth. Unsecured notes should be listed on Schedule I.

Losses.—Losses are strictly limited to those arising from fire, storm, shipwreck, or other casualty, or from theft, to the extent that such losses are not compensated for by insurance or otherwise. Losses must occur during the settlement of the estate. Depreciation in the value of securities or other property does not constitute a deductible loss. In listing losses, full particulars must be given not only as to the loss sustained, but the cause thereof, and in the case of death of livestock, the cause of death must be stated, if known. If insurance or other

compensation was received on account of loss, state the amount collected.

Support of Dependents.—No deduction may be taken for support of dependents unless the local law permits the allowance, the local court has made a decree specifying the amount thereof, and in fact the allowance was reasonably required for the support of the person in question during the settlement of the estate, and actual disbursement was made from the assets of the estate to the dependents.

For further instructions see Articles 38, 39, 40, and 52, Regulations No. 70, 1926 Edition.

Item No.	Mortgage	Unpaid amount at date of decedent's death	Interest accrued to date of death
	A mortgage made by deceased to Prudential Bond & Mtg. Co. covering Item 1, Schedule A, of record in the office of the County Recorder of San Diego	10,000. )	
	Deed of tr. same parties as above, same property	) 2,000. )	236.54
	A mortg. made to Annie R Daniels, covering Item 3 Schedule A of record Bk. 377 Mtgs., pg. 248, Rec. San Diego Co., So. Tr. & Com. Bk. Assgnee	40,000.	920.00
	Totals .....	\$52,000.	\$ 1156.54
	Grand Total .....		\$53156.54

(If more space is needed, insert additional sheets of same size)

Losses during administration

Amount

\$

None have been sustained as yet, but the administration of this estate has not yet been concluded and the executrix reserves the right to set up any losses which may hereafter accrue in an amended return when said administration is concluded.

Total ..... \$.....

Item No.

Support of dependents

Amount

\$

Family allowance granted to Adina Mitchell by the Sup. Court of the Co. of San Diego, in the Matter of the Est. of said deceased, by order dated Aug. 3, 1925, at the rate of \$2,000. per mo. from the date of death of said deceased; credit claimed at this time for two years, as the estate will not be closed prior to that time, and executrix reserves the right to claim further credit in the event that the estate is not closed within the two years estimated.

Total ..... \$ 48,000.00

(If more space is needed, insert additional sheets of same size)

[98]

Estate of..... District of.....

SCHEDULE K-1

Deduction of Property Identified as Previously Taxed

(See Schedule K-2 for Deduction of Charitable, Public, and Similar Gifts and Bequests)

INSTRUCTIONS

Enter in this schedule the amount deductible as representing property received from a donor within five years next preceding the present decedent's

death, or from a prior decedent who died within five years of the death of the present decedent, or property acquired in exchange for property so received. If property received from more than one donor or prior decedent is listed in this schedule, that received from each should be set out separately.

Where the present decedent exchanged property which had been so received by him, and additional valuable consideration was given by him in such exchange, there may be deducted in this schedule such proportion only of the value, at the date of his death, of the property so acquired by the present decedent in such exchange as the value of the property received by him from such donor or prior decedent, and parted with by him in the exchange, bore to the entire consideration given. For example: An item of property received from a donor or a prior decedent, which had a value of \$10,000, was exchanged for property valued at \$15,000, and an additional \$5,000 consideration was given by the present decedent. The full value at date of the present decedent's death of the property acquired in exchange should be listed under Schedule G and two-thirds of such value [illegible] under this schedule. The \$10,000 and \$15,000 values referred to in this example relate to the values as of the date of [illegible] exchange.

The amount deductible in this schedule may not exceed either (1) the value of the property received by the present decedent from a donor or prior de-

cedent, as that value was fixed by the Commissioner in determining the gift tax of such donor or the estate tax of the estate of such prior decedent, or (2) the fair market value of such property at date of present decedent's death.

Where any property received by the present decedent from a donor or prior decedent, or property acquired in exchange therefor, is used in the discharge of funeral or administration expenses, debts of the decedent, mortgages, support of dependents, or any bequest or devise for a public or charitable purpose, or is lost during the settlement of the present decedent's estate as the result of fire, storm, shipwreck, other casualty, or by theft, and deduction on account thereof is taken in Schedules H, I, J, and K-2, the deduction in this schedule must be correspondingly reduced.

For further instructions, see Articles 41, 42, 43, and 53 of Regulations No. 70, 1926 Edition.

Item No.	Description of property	Amount pre- viously taxed	Amount to be deducted
		\$	\$
	Totals .....		\$.....

(If more space is needed, insert additional sheets of same size)

Estate of ..... District of.....

## SCHEDULE K-2

Charitable, Public, and Similar Gifts and Bequests

## INSTRUCTIONS

When a deduction is claimed under this schedule, there must be submitted with the return: (1) Two copies of the will, one of which should be certified, or two copies of the instrument of gift, one of which should be certified or verified. Where decedent was a nonresident, but one copy of the document, certified or verified, need be furnished; (2) an affidavit of the executor showing whether the decedent's will has been, or to the best of his knowledge, information and belief will be, contested.

For further instructions see Articles 44 to 47, inclusive, and 54, Regulations No. 70, 1926 Edition.

Item No.	Name and address of beneficiary	Character of institution	Amount
			\$
	Total .....		\$.....

(If more space is needed, insert additional sheets of same size)

[100]

## SCHEDULE L

## Recapitulation

Sched-

ule	Gross estate	Value
A Real estate .....		\$264,700.00
B Stocks and bonds (grand total of all pages of this schedule).....		8,756.00
C Mortgages, notes, cash, and insurance		491,960.42
D-1 Jointly owned property.....		5,612.95
D-2 Other miscellaneous property.....		124,920.00



E	Transfers .....	.....
F	Powers of appointment.....	.....
G	Property identified as previously taxed .....	.....
	Total Gross Estate.....	\$895,949.37
	One-half of above	447,947.69
Sched- ule	Deductions	Amount
H	Funeral expenses .....	\$ 860.50
	Administration expenses:	
	Executors' commissions .....	11,500.00
	Attorneys' fees .....	11,500.00
	Miscellaneous .....	14,459.17
I	Debts of decedent.....	202,934.61
J	Unpaid mortgages .....	53,156.54
	Net losses during administration.....	.....
	Support of dependents.....	48,000.00
K-1	Property identified as previously taxed .....	342,409.82
K-2	Charitable, public, and similar gifts and bequests .....	.....
	Specific exemption (resident dece- dents only) .....	*
	Total Deductions .....	\$392,409.82
	Total gross estate.....	\$895,949.37
	Total deductions .....	392,409.82
	Net Estate for Tax.....	\$503,439.55

\*If decedent died prior to 10:25 a. m., Washing-  
ton, D. C., time, February 26, 1926, insert \$50,000;  
if decedent died subsequent thereto insert \$100,000.

251,719.78

## SCHEDULE M

## Deductions—Estate of Nonresident

If the decedent was not a resident of the United States, Hawaii, or Alaska, no deductions whatever are allowable unless the value of that part of his gross estate situated outside of the United States, Hawaii, or Alaska be set forth. If it be desired to claim deductions, execute Schedules H-I-J-K and compute the deductions allowable as follows:

1. Value of gross estate in United States \$.....  
(Schedules A-B-C-D-E-F-G) .....
2. Value of gross estate outside of the  
United States (attach itemized schedule  
showing values) .....
3. Value of total gross estate wherever sit-  
uated (1 plus 2).....
4. Gross deductions under Schedules H-I-J .....
5. Net deductions under Schedules H-I-J  
(that proportion of 4 that 1 bears to 3,  
not exceeding 10% of 1).....
6. Schedule K (within the United States) .....
7. Total deductions allowable (5 plus 6).....
8. Net estate taxable (1 minus 7).....

Executrix claims that she is entitled under the laws of the State of California to one-half of the community property of the decedent without the payment of tax, and this report is made upon that basis. [101]

DATE OF DEATH

NET ESTATE	(1)*		(2)*		(3)*		(4)*		(5)*	AMOUNT OF TAX
	to	inclusive	to	inclusive	to	inclusive	to	inclusive		
Exceeding— Not exceeding—	Amount of block	Rate per cent	Rate per cent	Rate per cent	Rate per cent	Rate per cent	Rate per cent	Rate per cent	Rate per cent	
\$50,000	\$50,000	1	1½	1	1	1	1	1	1	\$ 500.00
100,000	50,000	2	3	2	2	2	2	2	2	1000.00
150,000	50,000	2	3	3	2	2	2	2	3	1500.00
200,000	50,000	3	4½	4	3	3	3	3	3	4000.00
250,000	50,000	3	4½	6	6	6	6	6	4	103.18
400,000	150,000	4	6	8	8	8	8	8	4	.....
[Illegible]	450,000	4	6	8	8	8	8	8	5	.....
[Illegible]	600,000	5	7½	10	6	6	6	6	5	.....
600,000	150,000	5	7½	10	6	6	6	6	5	.....
750,000	150,000	5	7½	10	6	6	6	6	6	.....
800,000	50,000	5	7½	10	8	8	8	8	6	.....
1,000,000	200,000	5	7½	10	8	8	8	8	7	.....
1,500,000	500,000	6	9	12	10	10	10	10	8	.....
2,000,000	500,000	6	9	12	12	12	12	12	9	.....
2,500,000	500,000	7	10½	14	14	14	14	14	10	.....
3,000,000	500,000	7	10½	14	14	14	14	14	11	.....
3,500,000	500,000	8	12	16	16	16	16	16	12	.....
4,000,000	500,000	8	12	16	16	16	16	16	13	.....
5,000,000	1,000,000	9	13½	18	18	18	18	18	14	.....
6,000,000	1,000,000	10	15	20	20	20	20	20	15	.....
7,000,000	1,000,000	10	15	20	20	20	20	20	16	.....
8,000,000	1,000,000	10	15	20	20	20	20	20	17	.....
9,000,000	1,000,000	10	15	22	22	22	22	22	18	.....
[Illegible]	1,000,000	10	15	22	22	22	22	22	19	.....
[Illegible]	.....	10	15	25	25	25	25	25	20	.....

Total Estate Tax Shown by this Return..... \$7103.18  
 +Credit for estate, inheritance, legacy, or succession tax (see Article 9, Regulations 70, 1926 Edition).... \$25,000  
 +Credit for gift tax (see Article 9, Regulations 70, 1926 Edition) .....

Total Credits .....

Amount of estate tax payable after subtracting credits..... \$1775.79  
 \$5325.39

\*If the decedent's death occurred on the date of the passage of any of the revenue acts imposing the estate tax, care must be exercised to use the rates of tax in force at the exact instant of death. (See Article 1, Regulations 70, 1926 Edition.)  
 †If the decedent died prior to 4.01 p. m., Washington, D. C., time, June 2, 1924, his estate is not entitled to any credit for estate, inheritance, legacy, or succession taxes paid. (See Article 9, Regulations 70, 1926 Edition.)  
 ‡If the decedent died prior to 4.01 p. m., Washington, D. C., time, June 2, 1924, or subsequent to 10.25 a. m., Washington, D. C., time, February 25, 1926, his estate is not entitled to any credit for gift taxes paid. (See Article 9, Regulations 70, 1926 Edition.)

**JURAT FOR EXECUTORS AND  
ADMINISTRATORS**

We-I, .....  
the undersigned execut.....—administrat....., do  
hereby solemnly swear—affirm that on the.....  
day of....., 192 , the.....  
court at..... granted letters  
testamentary or of administration upon the estate  
of the foregoing-named decedent to.....;  
that ..... have made diligent search for prop-  
erty of every kind left by the decedent; that.....  
have carefully read the instructions printed on this  
form; that hereon is listed all of the property, tan-  
gible and intangible, forming the gross estate of the  
decedent so far as it has come to ..... knowledge  
and information; that ..... have carefully read  
all instructions under Schedule E of this form, and  
have made diligent and careful search for informa-  
tion as to whether the decedent, during his lifetime,  
made any transfers without a fair consideration  
in money or money's worth, and the answers given  
to the questions therein contained are true and com-  
plete to the best of ..... knowledge, informa-  
tion, and belief, and that ..... have no knowl-  
edge of any transfers made or trusts created by the  
decedent within two years of his death involving an  
amount or value equal to or exceeding \$5,000, other  
than bona fide sales for a fair consideration in  
money or money's worth, except as stated in Sched-  
ule E; that to the best of ..... knowledge, in-  
formation, and belief the value shown for each item

of property listed in this return was the fair market value of the same at the day of decedent's death; and that the debts, expenses, and charges entered herein as deductions from the gross estate are correct and legally allowable.

JURAT FOR BENEFICIARIES, CUSTODIANS, AND TRUSTEES

I-We, ..... the undersigned beneficiary.....—Custodian—Trustee, do hereby solemnly swear—affirm that ..... have carefully read the instructions printed on this form; that hereon is listed all of the property; tangible or intangible, contained in the gross estate of the decedent which has come into ..... possession and control; that to the best of ..... knowledge, information, and belief, the value shown for each item of property listed hereon was the fair market value of the same at the time of the decedent's death; and that the debts, expenses, and charges entered hereon as deductions from the gross estate are correct and legally allowable.

(Name) .....

Address) .....

(Name) .....

Address) .....

(Name) .....

Address) .....

Subscribed and sworn to before me, at San Diego, Calif. this 2 day of July, 1926.

J. B. McLEES, Co. Clerk.

By L. L. BAILEY, Deputy.

.....  
Notary Public—Deputy Collector.

Note.—If there is more than one executor or administrator, all must sign and swear to the return.

(The foregoing jurat may be sworn to before any person authorized to administer oaths.)

Name and address of attorney.....  
.....

[103]

EXHIBIT "F"

TREASURY DEPARTMENT

Washington

Office of

Commissioner of Internal Revenue

MT-ET-Cl.-2953-MMS

District of 6th California

Estate of John W. Mitchell

Date of death, July 2, 1925

Jan. 10, 1928.

Adina Mitchell, Executrix,

Estate of John W. Mitchell,

1063 Ocean Boulevard,

Coronado, California.

Madam:

The Bureau has no record of the receipt of a protest on behalf of the above-named estate against the

tentative findings disclosed in its letter addressed to the executor under date of September 28, 1927, in view of which fact the tentative findings set forth in said letter, a copy of which is attached hereto and made a part hereof, are hereby made final and the deficiency in the estate tax is determined to be \$10,273.48.

In accordance with the provisions of Title III of the Revenue Act of 1926, you are allowed 60 days from the date of the mailing of this letter (not counting Sunday as the sixtieth day) within which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the said Board within the 60 day period prescribed.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed, and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the decision, which has become final, has been made, the unpaid amount of such assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute

the enclosed Form 890, waiving (1) your right to file a petition with the United States Board of Tax Appeals and (2) the restrictions on the assessment and collection of such deficiency, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of the Estate Tax Division, Miscellaneous Tax Unit. In the event that you acquiesce in only a part of the determination, the enclosed form of waiver should be executed with respect to the amount of the deficiency to which you agree.

Respectfully,

C. R. NASH,  
Acting Commissioner.

vd

Enclosures:

Statement,

Waiver—Form 890 [104]



(934M)

CLAIMS

MT—ET—

District—Sixth California

Estate of—John W. Mitchell

Sep 28 1927

Date of death—[Illegible] 1925

Tentative deficiency—10,273.48

Adina Mitchell, Executrix,

Estate of John W. Mitchell,

1063 Ocean Boulevard,

Coronado, California.

Madame: The estate tax return filed for the above-named estate has been examined and a deficiency in respect of the tax has been tentatively determined.

If you acquiesce in the deficiency as determined, or in any part thereof, you may sign the enclosed waiver of the restrictions on the assessment of all or so much of the undischarged portion of the deficiency as results from adjustments in which you acquiesce and forward it to the Commissioner of Internal Revenue, Washington, D. C.

If you desire to protest against any portion of the deficiency such protest must be filed with the Commissioner of Internal Revenue within thirty days from the date of this letter. The procedure incident to the filing of a protest is governed by the Regulations relating to Estate Tax, copies of which may be obtained upon application to the Collector or to this office.

This determination is tentative only and no petition herefrom lies to the Board of Tax Appeals. If upon further consideration at the expiration of the thirty day period for filing protest it appears that a deficiency in respect of the tax exists final determination thereof will be made and you will be notified by registered mail in accordance with the provisions of Section 308 (a) of the Revenue Act of 1926. [105]

(934M)—2—Estate of John W. Mitchell  
MT—ET—2953—AES—Sixth California

Examination of the return discloses the following:

Correct amount of tax.....	\$17,376.66
Tax shown on the return.....	\$ 7,103.18
	<hr/>
Deficiency .....	\$10,273.48

There will be assessed and collected, as a part of the deficiency, interest thereon at the rate of six per centum per annum from one year after decedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

No allowance is made for credit for inheritance taxes paid to the State for the reason that the evidence required by Article 9, Regulations 70, has not been submitted.

Since the full amount of the tax shown on the return was not paid on or before the due date, the

undischarged portion of the returned tax amounting to \$1,775.79, bears interest at the rate of one per centum a month from one year after the date of the decedent's death until payment thereof is received by the Collector.

The return has been verified as filed except as to the following changes:

	Returned	Tentatively Determined
	\$	\$
GROSS ESTATE		
Stocks and Bonds		
Item 2,	3,860.00	3,800.00
Mortgages, Notes, Cash & Insurance		
Accrued interest, Item 2,	0.00	959.11
Accrued interest, Item 3,	0.00	2,894.35
Accrued interest, Item 4,	0.00	145.35
Cash as per Title Guaranty & Trust		
Company's books, Trust #822,	0.00	4,788.28
Cash as per Title Guaranty & Trust		
Company's books, Trust #807,	0.00	6,713.15
		[106]

## 3—Estate of John W. Mitchell

MT—ET—2953—AES—Sixth California

	Returned	Tentatively Determined
	\$	\$
Other Miscellaneous Property		
Item 2,	2,500.00	3,708.00
Item 5,	1,000.00	1,350.00

## DEDUCTIONS

	Tentatively Determined	Returned
	\$	\$
Executrix' commission,	10,000.00	11,500.00
Attorney's fee,	10,000.00	11,500.00
Miscellaneous administration expenses,	2,830.16	14,459.17
Support of dependents,	40,000.00	48,000.00
Wife's separate property,	28,554.84	0.00
To balance,	11,072.41	

Deduction is made of executrix' commission and attorney's fee in the amounts which the investigation disclosed will be paid.

Deduction is made of miscellaneous administration expenses in the amount found upon investigation to be correct.

Deduction is made of support of dependents in the amount found upon investigation to have been paid.

Deduction is made of the wife's separate property which was included in the gross estate of the decedent.

Enclosed herewith is a summary of the returned and determined values of the gross estate, and also the claimed and allowed deductions.

This case has been audited in accordance with the retroactive provision of the Revenue Act of 1926 with respect to rates of tax.

Respectfully,

R. M. ESTES,  
Deputy Commissioner.

ENW—Enclosures. [107]

5x Estate of John W. Mitchell Date of death—July 2, 1925  
 MT—ET—2953—AES—Sixth California

## SUMMARY

	Returned (706)	Tentatively determined on Review
GROSS ESTATE:	\$	\$
Real Estate .....	264,700.00	264,700.00
Stocks and bonds .....	8,756.00	8,696.00
Mortgages, notes, cash, and insurance .....	491,960.42	507,460.66
Jointly owned property.....	5,612.95	5,612.95
Other miscellaneous property.....	124,920.00	126,478.00
Transfers .....	.....	.....
Powers of appointment .....	.....	.....
Property identified as previously taxed .....	.....	.....
Total gross estate.....	895,949.37	912,947.61
<hr/>		
DEDUCTIONS:	\$	\$
Funeral expenses .....	860.50	860.50
Administration expenses—		
Executors' commissions .....	11,500.00	10,000.00
Attorneys' fees .....	11,500.00	10,000.00
Miscellaneous .....	14,459.17	2,830.16
Debts of decedent.....	202,934.61	202,934.61
Unpaid mortgages .....	53,156.54	53,156.54
Net losses during settlement.....	.....	.....
Support of dependents.....	48,000.00	40,000.00
Wife's separate property.....	.....	28,554.84
Property identified as previously taxed .....	.....	.....
Charitable, public, and similar gifts and bequests.....	.....	.....

Specific exemption (resident decedents only) .....	50,000.00	50,000.00
Total Deductions .....	*392,409.82	398,336.65
Net estate for tax.....	**503,439.55	514,610.96
Total tax .....	7,103.18	17,376.66
Tentative Deficiency Tax.....		10,273.48
Credits for estate, inheritance, legacy, or succession tax.....		
Credit for gift tax.....		
*Should be \$392,410.82		
** " " \$503,539.55		
(729M)		
Treasury Department		
Internal Revenue Bureau		
Estate Tax Division		
Form 7821A—Revised March 1923		

[108]

EXHIBIT G  
STATEMENT

SA:WHL  
LC

Sep. 19, 1932

In re: Adina Mitchell, Executrix  
Estate of John W. Mitchell,  
808 Bank of America Building,  
Los Angeles, California.

Docket: #36231.

Date of

Death: July 2, 1925

Estate Tax Liability	Tax Previously Assessed	Deficiency in Assesment of Tax
\$7,914.94	\$5325.39	\$2,589.55
Estate Tax Liability	Tax Previously Paid	Deficiency in Payment of Tax
\$7,914.94	\$5325.39	\$2,589.55

The Special Advisory Committee recommendation, agreement to stipulate and sixty-day letter dated January 10, 1928 have been made the basis of the adjustments disclosed in the attached schedules.

[109]

Adina Mitchell, Executrix,  
Estate of John W. Mitchell

Date of Death: July 2, 1925

Schedule 1

ADJUSTMENTS TO NET ESTATE

Net estate as disclosed by Bureau  
letter dated September 28, 1927  
upon which basis the sixty-day  
letter dated January 10, 1928 was  
issued

\$514,610.96

As corrected

310,373.49

Net adjustment

\$204,237.47

Additional deductions:

- |   |                   |
|---|-------------------|
| 1. Attorney's fees                        | \$15,000.00       |
| 2. Allowance for support of<br>dependents | 20,000.00         |
| 3. Separate property of the<br>wife       | <u>169,237.47</u> |

Net adjustment as above

\$204,237.47

Schedule 1-A

EXPLANATION OF ITEMS. CHANGED.

In accordance with the recommendation of the  
Committee, the net estate as shown in the sixty-day  
letter has been adjusted as shown below:

1. Attorney's fees as redetermined	\$25,000.00
As determined in sixty-day letter	10,000.00
	<hr/>
Additional deduction	\$15,000.00
2. Amount allowable for support of dependents as redetermined	\$60,000.00
As determined in sixty-day letter	40,000.00
	<hr/>
Additional deduction	\$20,000.00
3. The amount of the separate property of the wife has been redetermined upon the basis of the amount paid to John W. Mitchell as a beneficiary under Trust #750, Title Guarantee and Trust Company, Trustee. [110]	

Adina Mitchell, Executrix,  
Estate of John W. Mitchell.

Date of Death: July 2, 1925

Schedule 1-A (Continued)

Cash paid to J. W. Mitchell	\$ 84,912.31
Payment to K. C. Gillette charged to J. W. Mitchell to repay money borrowed...	10,380.00
Paid on mortgage for J. W. Mitchell.....	85,000.00
Paid on note of J. W. Mitchell	17,500.00
	<hr/>
Total.....	\$197,792.31
Amount determined in the sixty-day letter as the separate property of the wife	28,554.84
	<hr/>
Additional deduction	\$169,237.47



Schedule 2  
COMPUTATION OF TAX.

Net estate subject to tax		\$310,373.49
Estate tax on	\$250,000.00	\$5,500.00
Estate tax on \$60,373.49 at 4%	2,414.94	
Estate tax revised		7,914.94
Previously assessed, August 1926 list, page 301, line 9		5,325.39
Deficiency in assessment of tax	\$	2,589.55
Estate tax revised	\$	7,914.94
Tax paid, July 2, 1926		5,325.39
Deficiency in payment of tax	\$	2,589.55
		[111]

Mr. F. E. Collins  
Representative  
Special Advisory Committee  
Los Angeles, California.

Dear Mr. Collins:

The Stipulation of Facts in the Mitchell cases was concluded so hurriedly that there are errors in computation which should be corrected as the Stipulation in its present form presents obvious inconsistencies, in two particulars:

## I.

Two paragraphs on pages 5 and 6 read as follows:

“The net taxable income realized from payments made on the notes of F. A. Hartwell for the year 1925 was the sum of \$100,969.10, which was credited on the books of trust #822 of which amount the sum of \$50,585.55 was received prior to July 2nd, 1925, and the balance, or the sum of \$50,484.55, was received between the periods of July 2nd, 1925 and December 31, 1925.

“That immediately following the death of John W. Mitchell, Title Guarantee and Trust Company conveyed a portion of the property to which it held title under Declaration of Trust No. 822 for a total consideration of \$87,124.00, less commission and selling expenses of \$5,975.25, which consideration was paid in cash at said time. That if the March 1, 1913 value of said property is material to a determination of the net taxable income resulting from said sale, it was the sum of \$14,521.39.”

Your memorandum for the year 1925 shows collections on the Hartwell notes of \$38,625.00. The transcript of the collection on these notes, as furnished to us by the Title Guarantee and Trust Company, shows collections \$37,625.00, which is \$1,000 less than your figure. We are not disposed to insist on the lower amount, but merely call attention to it in passing. In your computation of profit based on the 1913 value as adjusted you arrived at the

correct percentage of 68.13, which applied to collections gives a gross profit in that year of \$26,315.21. With this figure you set up the following for the year 1925:

Net Profit on Sales.....	26,315.21
Interest .....	11,125.90
Net Profit on Real Estate Sold.....	66,627.36
	<hr/>
Total .....	104,068.47
Deductions Allowed .....	3,099.37
	<hr/>
Net Income as Adjusted.....	\$100,969.10

[112]

The item of \$66,627.36 representing net profit on land sold was derived from the sale of 218 feet of beach land which, according to the Stipulation as quoted above, was conveyed "immediately following the death of John W. Mitchell." It is therefore apparent that the division of income for the year 1925, as stated in the Stipulation, is incorrect for it is obvious that the income in the portion of the year following the death of Mr. Mitchell must have been in excess of the sum of \$66,627.36.

The correct figures for these periods are stated in the attached memorandum showing a computation for the two periods and we submit that the Stipulation should be changed accordingly in order that the Board of Tax Appeals, in considering these, will not be faced with an obvious error.

## II.

On the bottom of page 6 and the top of page 7 the

Stipulation recites: "That the March first, 1913, value of the property herein referred to as being sold prior to the death of John W. Mitchell was as follows:

Vermont Avenue .....	166,600.00
Cahuenga Acreage .....	145,000.00
Beach property .....	14,521.39''

This last item of value for the beach property should be \$97,338.20, which is the amount given in your computations for 1460 feet at \$66.67 per foot. The amount given in the Stipulation is the value of the 218 feet sold after the death of Mr. Mitchell, which amount is correctly set up on page 6 of the Stipulation in the paragraph which has been quoted above.

The Stipulation should therefore be amended to state the correct value of the beach property sold at the stipulated amount.

Statements as rendered by the Title Guarantee and Trust Company showing payments on the Hartwell notes and your memorandum of computations is attached as a basis for the foregoing.

10/19/33

Mr. Collins:

The foregoing portion of this letter has been prepared by Judge Edmonds who forwarded the subject matter to me in rough form; I am passing it on to you knowing of your familiarity with the case and trusting that we might receive from you an expression as whether or not the errors as here de-

pected are correct to the end that we might be able to advise Mr. Mather in the premises.

I would thank you to kindly return to me the enclosed exhibits when they have served their purpose.

Truly,

RALPH W. SMITH (Signed)

Enclosure: 7 Exhibits.

[113]



TREASURY DEPARTMENT

Los Angeles, California,

October 20th, 1933.

Office of

Commissioner of Internal

Revenue

Address reply to

Commissioner of Internal Revenue

And refer to

SA:WHL

TEC

Mr. Ralph W. Smith,  
808 Bank of America Building,  
Los Angeles, California.

My dear Mr. Smith:

Reference is made to your letter of October 19th, 1933, regarding errors in the stipulation of fact filed in the Mitchell cases.

With respect to the first item it is customary, when necessary to prorate the income of a business for a period of less than a year, to divide the years income on the basis of the number of months involved. Thus in the case of Trust No. 822 the total income for the year 1925 was divided on the basis that 6/12ths of the total was earned before Mr. Mitchell's death and 6/12ths after his death. It is undoubtedly true in this particular case that the Beach property was sold after July 1, 1925 and the resulting profit was earned in the last six months

period. I do not believe, however, that Mr. Mather would be willing to agree to a change on the basis that this particular profit was earned after July 1st and that all other earnings were earned equally before and after that date. In other words if the method of prorating by months is not used then it will be necessary to show just what the actual net earnings were from January 1 to July 2 and from July 3 to December 31, 1925.

With respect to the second item it is undoubtedly true that the beach frontage sold before Mr. Mitchell's death had a March 1, 1913 value of \$97,338.20 on the basis of \$66.67 per foot for 1,460 feet, and that the valuation of \$14,521.39 stipulated was for the 218 feet sold after Mr. Mitchell's death. I assume that Mr. Mather will have no objection to correcting the stipulation in this respect but I have no further connection with the case and it is a matter that will have to be taken up with the General Counsel in Washington.

Respectfully,

F. E. COLLING (Signed)

Representative, Special Advisory Committee.

Enclosures:

Exhibits forwarded with your letter [115]

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[Title of Court and Cause—Docket Nos. 47516, 66584, 70861.]

Promulgated December 28, 1934.

1. Income—Joint Tenancy in Trust Corpus.—Where separate properties of husband and wife



were conveyed in trust for purposes of furnishing security in certain business deals of husband, who was named as beneficiary under each trust, and later all such properties were reconveyed under one trust designating husband and wife as beneficiaries under a joint tenancy with right of survivorship, it is held that each was entitled to one half of the income of the trust, and, following the death of the husband, all of such income was the property of and taxable to the wife.

2. Penalties.—Where no returns are ever filed by the taxpayer, the imposition of 25 percent penalties is mandatory. *Scranton, Lackawanna Trust Co., Trustee, Katherine W. Murray Trust*, 29 B. T. A. 698, followed.

Ralph W. Smith, Esq., Claude I. Parker, Esq., and L. A. Luce, Esq., for the petitioner.

Thomas M. Mather, Esq., for the respondent.

### OPINION.

LEECH: These proceedings were duly consolidated for hearing. Under Docket No. 47516 the petitioner seeks redetermination of deficiencies of \$5,742.99 for the calendar year 1924 and \$11,270.77 for the period from January 1 to July 2, 1925, the date of death of decedent, John W. Mitchell. At the hearing it was formally stipulated by the parties that the deficiency for the calendar year 1924 is the sum of \$4,048.04. This leaves for consideration in this docket the deficiency for the year 1925.

Under Docket No. 66584 petitioner, as administrator of the estate of Adina Mitchell, seeks redeter-

mination of deficiencies and penalties asserted against his decedent for years and in amounts as follows: [116]

	Deficiency	Penalty
Period July 2 to Dec. 31, 1925.....	\$5,669.58	\$1,417.39
1926 .....	4,095.80	1,023.95
1927 .....	3,623.49	905.87
1928 .....	4,551.08	1,137.77

Under Docket No. 70861 petitioner, as administrator of the estate of Adina Mitchell, seeks re-termination of a deficiency of \$17,600.17 and penalty of \$4,400.04 asserted against his decedent for the calendar year 1925. This latter deficiency includes the deficiency for a portion of the year 1925 included in the appeal under Docket No. 66584.

The deficiencies in question arise from respondent's treatment of the profit accruing in the several years on certain properties held in trust. It is contended by him that the two decedents, John W. Mitchell and Adina Mitchell, held a joint tenancy in such property with right of survivorship and that Adina Mitchell having survived her husband, John W. Mitchell, one half of the income during the period January 1 to July 2, 1925, the date of John W. Mitchell's death, was taxable to each of the petitioners and that the entire income from the property for the balance of the year 1925 and for the years 1926, 1927, and 1928 was taxable to Adina Mitchell.

The facts are formally stipulated and we include the stipulation by reference as our findings of fact.

Briefly stated the facts are that John W. Mitchell died July 2, 1925, and his wife, Adina Mitchell, died April 20, 1931. At the time of their marriage Mrs. Mitchell had separate property of \$10,000 and subsequently inherited additional funds. These funds of Mrs. Mitchell were used many years ago in the purchase of land at Vermont Avenue and Beverly Boulevard in Los Angeles, California, on which a home was built and occupied for many years by the couple. The title to this property was in Mrs. Mitchell.

Sometime between 1888 and March 1, 1913, John W. Mitchell acquired two parcels of real estate. Subsequent to the year 1913 Mr. Mitchell, in the course of certain business transactions in which he was engaged and for the purpose of furnishing necessary security for loans made him and to effect the subdivision and sale of some of the properties, had conveyed in trust the two properties which he individually owned, and secured the conveyance in trust by Mrs. Mitchell of the home property. The beneficiary under each trust was John W. Mitchell.

On April 1, 1924, John W. Mitchell, under power vested in him under the trusts, caused the trustee in all three of the trusts mentioned above to issue one declaration of trust in respect of the properties held under these three trusts. This declaration of trust provides in part as follows:

WHEREAS it was the intention of John W. Mitchell and Adina Mitchell, his wife, that all of said properties should be held by them as

joint tenants, with right of survivorship.

NOW THEREFORE THIS IS TO WITNESS that TITLE GUARANTEE AND TRUST COMPANY at the request of JOHN W. MITCHELL and ADINA MITCHELL, his wife, declares that it holds the said trusts and all assets thereof in Trust for JOHN W. MITCHELL and ADINA MITCHELL, his wife, as joint tenants, with right of survivorship \* \* \*.

Certain of the property held under the above trust consisted of notes representing deferred payments of the purchase price of certain portions of the real property deeded in trust and which had been sold by the trustee. These deferred payments included unrealized profits on the sales. Upon the death of John W. Mitchell on July 2, 1925, Adina Mitchell was appointed as executrix of his estate, and in reporting such estate for Federal tax included the notes held by the trustee as part of the corpus of that estate. She filed no personal income tax return for herself for the year 1925 or the three following years. In 1930 delinquent returns were prepared for Mrs. Mitchell by a deputy collector for the period July 2 to December 31, 1925, and for the years 1926 and 1927. These returns were filed with the collector of internal revenue for the sixth district of California on February 7, 1930. For the year 1928 a return was prepared for Mrs. Mitchell by a deputy collector and filed with the same collector on November 4, 1930.

In determining the deficiencies here in question the respondent has included in income of the decedent, John W. Mitchell, one half of the profit derived from the trust property for the period January 1 to July 2, 1925. In determining the deficiencies against the decedent, Adina Mitchell, he has included in her income for the year 1925 one half of the income from the trust property for the period January 1 to July 2, 1925, and all of the income from such properties for the balance of that calendar year and for the three succeeding years. For each of these years respondent has asserted a delinquency penalty against this taxpayer upon her failure to file returns.

The answer to the question here involved is determined by the character of the estate possessed by John W. Mitchell and Adina Mitchell in the trust property at the time of his death on July 2, 1925. The property in question was held under an indenture of trust providing specifically that the interests of these two parties were as "joint tenants with right of survivorship." It necessarily follows that if their titles were those of joint tenants, Adina Mitchell [118] did not take the property as an heir or devisee of her husband but as survivor. She succeeded to no new title or right but from that time forward was entitled to the absolute estate. *Carter v English*, 15 Fed. (2d) 6.

It is contended by counsel for petitioner that under the last declaration of trust no joint tenancy was created as one of the parties to that conveyance

was the husband, in whom there was an interest prior to such conveyance. He admits an inability to find a decision by the California courts on this question, but contends that the weight of authority is that a joint tenancy cannot thus be created.

We have considered this question carefully and cannot agree that the weight of authority is as contended by petitioner's counsel. In many jurisdictions the rule is to the contrary and the conclusion there reached sustaining a joint tenancy under these conditions has been by courts of recognized learning and ability. *Lawton v. Lawton*, 48 R. I. 134; 136 Atl. 241; *Ames v Chandler*, 265 Mass. 428; 164 N. E. 616; *Colson v. Baker*, 87 N. Y. S. 238; *Saxon v. Saxon*, 93 N. Y. S. 191.

Section 683 of the Civil Code of California provides "a joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants." We think that the provision of the trust instrument in this case brings it within the definition of the statute. The purpose of the quoted section of the code is stated by the Code Commission of California to be the recognition of a joint tenancy if expressly declared.

We hold that under the declaration of trust, #822 "B", made a part of the stipulation filed, the two decedents, John W. Mitchell and Adina Mitchell, took interests as joint tenants in the trust property

and that the decedent, John W. Mitchell, was entitled to one half of the profits from this property from January 1 to July 2, the date of his death, and that the balance of the profit from the trust property for the calendar year 1925 and all of the profit from such property for the calendar years 1926, 1927, and 1928 was taxable to the decedent, Adina Mitchell.

As to the several 25 percent penalties determined, despite the fact that there may have been reasonable cause for failure to file timely returns for the years in question, no returns were filed by the taxpayer. The filing of them by the deputy collector is not a filing by the taxpayer. Reasonable cause was, therefore, no defense, and the imposition of the penalties was mandatory. Section 3176 of Revised Statutes, as amended; *Scranton, Lackawanna Trust Co., Trustee*, [119] *Katherine W. Murray Trust*, 29 B. T. A. 698; *John B. Nordholt*, 4 B. T. A. 509.

In reference to the contention by petitioner that the statute of limitations has barred recovery of any deficiency, it need only be stated that no returns were filed by the taxpayer, Adina Mitchell, and consequently the statute did not begin to run until the filing for her of returns by a deputy collector, and that the deficiency letter in each case was mailed within the period of three years from that date. It is stipulated that a return was filed for the taxpayer, John W. Mitchell, by Adina Mitchell as executrix, for the period January 1 to July 2, 1925. The date this return was filed is not disclosed and

it follows that petitioner has failed to show that the statutory period for assessment and collection of the deficiency for that year has elapsed. Assessment and collection of the deficiencies are not barred.

Judgment will be entered under Rule 50. [120]

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[Title of Court and Cause—Docket Nos. 47516, 66584, 70861.]

### NOTICE OF SETTLEMENT.

The annexed proposed determinations under the opinion of the Board of Tax Appeals heretofore rendered herein, will be presented to the Board for settlement on the ..... day of ....., 1935.

This notice of proposed determinations is submitted in accordance with the decision of the Board without prejudice to the Commissioner's right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

(Signed) ROBERT H. JACKSON

Assistant General Counsel  
for the  
Bureau of Internal Revenue.

Of Counsel:

T. M. MATHER,  
Special Attorney,  
Bureau of Internal Revenue.

tm 1/28/35 [121]



## STATEMENT OF RECOMPUTATION

IT:AR:BTA-Recomp.

ET

In re: Douglas L. Edmonds, Administrator,  
Estate of Adina Mitchell, Deceased,  
Los Angeles, California.

B.T.A. Docket: #66584

Years: 1926, 1927, 1928.

## INCOME TAX LIABILITY

Years	Income tax Liability	Income Tax Assessed	Deficiency	Penalty
1926	\$ 5,032.09	None	\$5,032.09	\$1,258.02
1927	3,452.89	None	3,452.89	863.22
1928	<u>4,420.80</u>	None	<u>4,420.80</u>	<u>1,105.20</u>
Totals	\$12,905.78	None	\$12,905.78	\$3,226.44

1926

Net income shown by the  
sixty-day letter dated  
April 16, 1932

\$43,774.55

Add:

Profit from the sale of real estate

5,448.94

Net income adjusted

\$49,223.49

1927

1928

Net income shown by the  
sixty-day letter dated  
April 16, 1932

\$40,822.62

\$46,465.92

Deduct:

Profit from the sale of  
real estate

1,082.52

766.37

Net income adjusted

\$39,740.10

\$45,699.55

It was stipulated before the United States Board of Tax Appeals that the petitioner realized income from real estate and interest income as shown below, the income being received through Trust 822-B. [122]

## STATEMENT OF RECOMPUTATION

Years	Property Sold	Taxable Income Received as Adjusted Including Interest Income	Amount Included in Sixty-day Letter
1926	Cahuenga Acreage (Trust 822) and Beach Property (Trust 807)	\$49,223.49	\$43,774.55
1927	Cahuenga Acreage (Trust 822)	39,740.10	40,822.62
1928	Cahuenga Acreage (Trust 822)	45,699.55	46,465.92

## COMPUTATION OF TAX

1926

Net income adjusted	\$49,223.49
Less:	
Personal exemption	1,500.00
Net income subject to normal tax	\$47,723.49
Normal tax at 1½% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$39,723.49	1,986.17
Surtax on \$49,223.49	2,879.05
Total	\$ 5,045.22
Less:	
Earned income credit on \$5,000.00	13.13
Tax liability	\$ 5,032.09

25% penalty for delinquency, 1/4 of \$5,032.09		1,258.02
		<hr/>
Total amount assessable		\$ 6,290.11
Tax previously assessed	None	
Penalty previously assessed	None	None
Deficiency in tax		\$ 5,032.09
Penalty		1,258.02
		<hr/>
Total		\$ 6,290.11
		[123]

STATEMENT OF RECOMPUTATION  
COMPUTATION OF TAX—1927

Net income adjusted		\$39,740.10
Less:		
Personal exemption		1,500.00
		<hr/>
Net income subject to normal tax		\$38,240.10
Normal tax at 1 1/2% on \$4,000.00		\$ 60.00
Normal tax at 3% on \$4,000.00		120.00
Normal tax at 5% on \$30,240.10		1,512.01
Surtax on \$39,740.10		1,774.01
		<hr/>
Total		\$3,466.02
Less:		
Earned income credit on \$5,000.00		13.13
		<hr/>
Tax liability		\$ 3,452.89

25% penalty for delinquency, 1/4 of \$3,452.89		863.22
		<hr/>
Total amount assessed		\$ 4,316.11
Tax previously assessed	None	
Penalty previously assessed	None	None
		<hr/>
Deficiency in tax		\$ 3,452.89
Penalty		863.22
		<hr/>
Total		\$ 4,316.11

## COMPUTATION OF TAX—1928

Net income adjusted	\$45,699.55
Less:	
Personal exemption	1,500.00
<hr/>	
Net income subject to normal tax	\$44,199.55
Normal tax at 1 1/2% on \$4,000.00	\$ 60.00
Normal tax at 3% on \$4,000.00	120.00
Normal tax at 5% on \$36,199.55	1,809.98
Surtax on \$45,699.55	2,433.95
<hr/>	
Total	\$ 4,433.93
ET/NK [124]	

Brought forward		\$4,433.93
Less:		
Earned income credit on \$5,000.00		13.13
		<hr/>
Tax liability		\$4,420.80
25% penalty for delinquency, 1/4 of \$4,420.80		1,105.20
		<hr/>
Total amount assessable		\$5,526.00
Tax previously assessed	None	
Penalty previously assessed	None	None
		<hr/>
Deficiency in tax		\$ 4,420.80
Penalty		1,105.20
		<hr/>
Total		\$ 5,526.00
ET/NK		

[Endorsed]: Filed Jan. 29, 1935. [125]

[Title of Court and Cause.—Docket Nos. 47516,  
66584, 70861.]

MOTION FOR RECONSIDERATION  
AND REHEARING.

In presenting this motion for reconsideration and rehearing the petitioner respectfully contends:

1. That the notes and monies here involved are not, under the facts and law, both corpus of the estate of John W. Mitchell, deceased, and income to Adina Mitchell, his surviving wife, for the years here involved.

2. That if the said promissory notes and monies constitute corpus of the estate of John W. Mitchell,

deceased, that said notes and monies are not properly income to Adina Mitchell.

3. That if it should be held that the notes and monies are income to Adina Mitchell, then the petitioner is entitled to have the deficiency proposed against Adina Mitchell reduced by [126] the amount of estate tax paid on the notes and monies here involved as corpus of the estate of John W. Mitchell, deceased.

4. The petitioner urgently contends, however, that the notes and monies here involved constituted corpus of the estate of John W. Mitchell for two reasons:

(a) If said notes and monies were joint tenancy properties they constituted corpus of the estate of John W. Mitchell and not income to Adina Mitchell.

(b.) Petitioner further contends, however, that the notes and monies were NOT joint tenancy properties but were the individual properties of John W. Mitchell, deceased and therefore properly corpus of his estate rather than income to Adina Mitchell.

(c) Therefore in any event, whether the notes and monies were joint tenancy properties or were the individual properties of John W. Mitchell, deceased, they constituted corpus of the estate of John W. Mitchell rather than income taxable to Adina Mitchell.

To sum up petitioner's position in this case it is contended that the notes and monies were corpus of the estate of John W. Mitchell and not income to Adina Mitchell, but that in the alternative, if

the Board should decide that the notes and monies were income to Adina Mitchell then she was and is entitled to have the deficiency proposed against her reduced by the estate tax paid on the said notes and monies which were included in the estate tax return of John W. Mitchell, deceased. [127]

The principal issue in this proceeding is whether any part of the payments made during the years here involved on certain promissory notes known as the "Hartwell notes" constituted taxable income to the decedent, Adina Mitchell. The notes may be described as follows:

Note for \$295,000 drawn in 1923 and payable to John W. Mitchell;

Note for \$90,000 drawn in 1923 and payable to John W. Mitchell (page 3, Stipulation of Facts).

Upon the death of John W. Mitchell on July 2, 1925 his executrix reported these notes as corpus of his estate, in the Federal Estate Tax filed (page 3, Opinion of the Board).

The inclusion of the principal of these notes in the estate tax return was approved by respondent. As a matter of fact respondent proposed a deficiency in the estate tax of John W. Mitchell, deceased; the deficiency was finally stipulated to be \$2,589.55, and the Board entered an order finally determining said sum as deficiency in estate tax due from Estate of John W. Mitchell (page 6, Stipulation of Facts).

In the instant proceeding, the respondent attempts to tax payments made on the principal of the said notes as income to Adina Mitchell (now de-

ceased) for the years 1925, 1926, 1927 and 1928. This in spite of the fact that the said notes were included in their entirety as corpus in the Federal Estate Tax return of John W. Mitchell, deceased and Federal Estate Tax paid thereon. [128]

Likewise, there was reported in the Federal Estate Tax Return of John W. Mitchell, deceased, the sum of \$81,148.75, an amount derived by the Title Guarantee and Trust Company as trustee for John W. Mitchell from the sale of Santa Monica real estate. This amount was entered in the estate tax return (Exhibit E, Schedule C, item 1) as cash on hand. This amount was accepted by the Commissioner as corpus of the estate and Federal estate tax paid thereon.

The Commissioner now determines that said sum of \$81,148.75 is income to Adina Mitchell and that a portion of said sum is taxable as profit to her from the sale of real property.

Thus the Commissioner would treat as taxable income to Adina Mitchell, large sums of money which he has already agreed are corpus of the estate of John W. Mitchell, deceased, and upon which the Commissioner has long since collected estate tax.

Under the recent decision of the Supreme Court of the United States in *Bull v. The United States* (decided April 29, 1935 and reported at paragraph 9346, Vol. 3, 1935 edition, Commerce Clearing House) the above items cannot be corpus of the estate of John W. Mitchell, deceased, and also income to Adina Mitchell.



Therefore, relying upon *Bull v. The United States*, supra, the petitioner respectfully asks reconsideration of the decision of the Board in this cause. [129]

In *Bull v. The United States*, supra, the Supreme Court stated in part as follows:

“The petitioner included in his estate tax return, as the value of Bull’s interest in the partnership, only \$24,124.20, the profits accrued prior to his death. The Commissioner added \$212,718.79, the sum received as profits after Bull’s death, and determined the total represented the value of the interest. The petitioner acquiesced and paid the tax assessed in full in August, 1921. He had no reason to assume the Commissioner would adjudge the \$212,718.79 income and taxable as such. Nor was this done until July, 1925. The petitioner thereupon asserted, as we think correctly, that the item could not be both corpus and income of the estate.” (underlining supplied)

The instant proceeding presents even a stronger set of facts for the petitioner than *Bull v. United States*, supra. Here we have involved not partnership profits but actual securities (promissory notes) and a sum of cash money included in the estate and taxed as corpus. Nevertheless, the payments on the principal of the notes and a portion of the actual cash money have been treated by the respondent as income to Adina Mitchell individually although the notes and the money were actually determined by re-

spondent to be corpus of the estate of John W. Mitchell.

If the notes and money were not properly corpus of the estate of John W. Mitchell, this petitioner is entitled, under the Bull decision to set off against the deficiencies proposed, the estate tax paid on the notes and the money as corpus. As said by the Supreme Court, the retention of both the estate tax and the income tax on the same items would be immoral.

We think, however, that the notes and the money were properly corpus of the estate of John W. Mitchell and not the income of Adina Mitchell.

[130]

We do not believe that the notes and the money were joint tenancy properties, but even though the notes and the money were joint tenancy properties, they were properly corpus of the estate of John W. Mitchell under the decision of this Board in Appeal of Emma Melzer, Executrix et al, 23 B. T. A. 124. In that case the Board found that the entire value of the California property held by the decedent and his wife as joint tenants should be included in the gross estate of the decedent and made subject to Federal estate tax as corpus of the decedent's estate.

The petitioner in the Melzer case relied on *Carter v. English*, 15 Fed. (2d) 6 which approved the doctrine of *In re Gurnsey's Estate*, 177 Cal. 211, 170 Pac. 402 and held that no part of property held in joint tenancy should be included in the estate of

a deceased joint tenant, under the Revenue Act of 1916.

The doctrine of *In re Gurnsey's Estate* supra was that title to joint tenancy property does not vest in the survivor upon the death of the cotenant, but that title to the property vested in the surviving joint tenant from the time of the original grant.

In *Gwinn v. Commissioner*, 287 U. S. 224, the Supreme Court refused to follow *Carter v. English* supra and *In re Gurnsey's Estate* supra. The Supreme Court held that the death of the cotenant became the generating source of definite accessions to the survivor's property rights. [131]

In the Appeal of *Melzer*, supra (page 129 of 23 B.T.A.) the Board clearly stated that it did not agree with the view of the Court in *Carter v English*, supra.

However, in the instant case, *Carter v. English*, supra is cited (page 4) by the Board in its opinion as authority for its decision that the payments on the principal on the notes and the sum of \$81,148.75 constituted income to Adina Mitchell.

It is submitted that *Carter v. English*, supra, has been followed neither by this Board nor the Supreme Court of the United States as shown hereinabove. Therefore that decision should not be followed in the instant case to tax the notes and the money as income to Adina Mitchell. Under the decision of the Board in Appeal of *Melzer*, supra and the decision of the Supreme Court in *Gwinn v. Commissioner*, supra, if the notes and the money

were joint tenancy properties, they were part of the corpus of the Estate of John W. Mitchell and not income to Adina Mitchell. Also, the Commissioner treated the notes and the money as part of the corpus of the Estate of John W. Mitchell and collected estate tax thereon. He should not be allowed to subject these properties to an estate tax as part of the corpus of the Estate of John W. Mitchell and then tax them a second time as income to Adina Mitchell.

Also, it seems unfair to California taxpayers for the Board to refuse to follow *Carter v. English* supra for estate tax purposes and then to follow that decision in taxing the properties here involved as income to Adina Mitchell.

It is therefore submitted that if the notes and money were joint tenancy properties, they were a part of the corpus of [132] the Estate of John W. Mitchell and not income to Adina Mitchell.

Clearly, if the notes were not joint tenancy properties, they certainly were not income to Adina Mitchell but were corpus of the Estate of John W. Mitchell.

We therefore finally pass to the question whether the "Hartwell notes" were joint tenancy properties or the individual properties of John W. Mitchell prior to his death.

In deciding that the notes and monies were joint tenancy properties, the Board on page 3 of its opinion quotes a portion of the Declaration of Trust 822 B, which is the document introduced as evidence and identified in the record as Exhibit "D."

It is respectfully desired to call attention to a particular portion of Exhibit "D" not quoted by the Board in the opinion. This most pertinent portion of Exhibit "D" provides as follows:

"NOW THEREFORE THIS IS TO WITNESS THAT TITLE GUARANTEE AND TRUST COMPANY, at the request of JOHN W. MITCHELL AND ADINA MITCHELL, his wife, declares that it holds the said Trusts and all assets thereof in Trust for John W. Mitchell and Adina Mitchell his wife, as joint tenants, with right of survivorship, subject to all the terms of any assignment or assignments heretofore made to secure any indebtedness in favor of L. C. BRAND, with additional provisions that the said Trusts shall also secure any indebtedness of the TITLE GUARANTEE AND TRUST COMPANY, and further, the parties hereto hereby assign to TITLE GUARANTEE AND TRUST COMPANY all notes in favor of John W. Mitchell given as part of the purchase price on the sale of properties covered by said Trusts, and in event of a default in the payment of any indebtedness in favor of L. C. BRAND, or TITLE GUARANTEE AND TRUST COMPANY, of any kind or nature, or for any purpose whatsoever, it is a provision hereof that the Trustee may sell the interests of JOHN W. MITCHELL and ADINA MITCHELL, his wife, in and to said Trusts or trust deeds as herein [133] provided, and with-

out the necessity of making demand on the said parties, or the survivor thereof, which said sale shall be in the following manner, namely:—”

The underscored language is all important and should be given due consideration. The notes were assigned to the Title Guarantee and Trust Company to cover the indebtedness of Mr. Mitchell.

The so-called declaration of trust No. 822-B (Exhibit D) provides for two different things. First, the agreement recites that whereas John W. Mitchell was the beneficiary named in the declarations of trust previously executed and that he and Mrs. Mitchell desired that they should be the beneficiaries thereof in joint tenancy, that thereafter the trustee holds the said trusts and all the assets thereof in trust for John W. Mitchell and Adina Mitchell, his wife, as joint tenants with right of survivorship, subject to all the terms of any assignment or assignments theretofore made to secure any indebtedness in favor of L. C. Brand, with additional provisions that the said trust shall also secure any indebtedness of the Title Guarantee and Trust Company. That is the first subject covered by the Agreement.

(Continuing, the instrument (Exhibit D) recited:

“And further the parties hereto hereby assign to Title Guarantee and Trust Company all notes in favor of John W. Mitchell given as part of the purchase price on the sale of property covered by said trusts.”

In other words, the instrument recognizes that the notes were not part of the "assets" described in the first subject covered but confirms their hypothecation by Mr. Mitchell to his creditor Title Guarantee and Trust Company, for money [134] theretofore borrowed, a transaction entirely independent of the trusts.

We have shown by the stipulation of facts (page 4) that at the time these notes "were executed and delivered by the payees thereof, said John W. Mitchell deposited them with Title Guarantee and Trust Company as collateral security for the payment of certain indebtedness then owing by him to it. Said notes continued to be held by said Title Guarantee and Trust Company during the taxable periods here in question.

In order to ascertain what the intention of the parties was at the time of the execution of this instrument it is necessary to have the situation then existing clearly before us. The stipulation of facts shows that the Title Guarantee and Trust Company was not a discretionary trustee but merely a custodian and naked trustee (holding only title). Trustee held certain real property in this custodian trust. Other real property originally conveyed to it under this trust, which trust was always revocable in form, had been ordered sold by the beneficiary and Mr. Mitchell had taken notes for the purchase price which it is stipulated were then in the possession of his creditor as security for an indebtedness.

The proper construction of the instrument (Exhibit D) in the light of these facts is that Mr. and Mrs. Mitchell provided by its terms that they should thereafter be the beneficiaries of said trusts and that the hypothecation of notes was confirmed but without any change of title as to them. [135]

An analysis of Exhibit D shows that there is no statement that Mr. and Mrs. Mitchell were to be the owners of the notes in joint tenancy. Not only the instrument, but the determination on the Federal estate tax clearly show that Mrs. Mitchell did not take the notes as her property and the recitals in Exhibit D show that the notes were the property of Mr. Mitchell and that Mrs. Mitchell merely transferred to the Title Guarantee and Trust Company any rights to the notes which she might have as the wife of John W. Mitchell as security for money which Mr. Mitchell had borrowed from it.

The incontrovertible facts show that the notes were held by the Title Guarantee and Trust Company as pledgee. They belonged to John W. Mitchell, subject to the terms of the pledge, and were correctly returned for Federal Estate Tax purposes as part of his estate. All income from them has been returned as income of the estate and Adina Mitchell should not be taxed for any part thereof.

The respondent's statement of recomputation filed under Rule 50 states the following:

“It was stipulated before the United States Board of Tax Appeals that the petitioner realized income during the year 1925, from the



sale of real estate and interest income as shown below, the income being received through Trust 822 B.”

This is inaccurate. the stipulation provided:

“The net taxable income realized from payments made on the notes of F. A. Hartwell and the sale of property mentioned in the next paragraph for the year 1925 was the sum of \$100,969.10, which was credited on the books of trust 822, of which amount the sum of \$50,585.55 was received prior to July 2nd, 1925 and the balance, or the sum of [136] \$50,484.55 was received between the periods of July 2nd, 1925 and December 31, 1925.

“That immediately following the death of John W. Mitchell, Title Guarantee and Trust Company conveyed a portion of the property to which it held title under Declaration of Trust No. 822 for a total consideration of \$87,124.00, less commission and selling expenses of \$5,975.25, which consideration was paid in cash at said time. That if the March 1, 1913 value of said property is material to a determination of the net taxable income resulting from said sale, it was the sum of \$14,521.39.”

From the foregoing it appears that the notes were the individual properties of John W. Mitchell before his death; that they were properly included as part of the corpus of his estate in the return filed after his death; and that payments on the principal

of the notes did not constitute taxable income to Adina Mitchell. The same is true of the \$81,148.75 included in the Estate Tax Return of John W. Mitchell as cash on hand.

WHEREFORE, it is prayed that this motion be granted and that the Board redetermine that the notes and monies here involved were not income to Adina Mitchell but corpus of the Estate of John W. Mitchell, deceased; and in the alternative, if the Board should determine that the notes and monies were income to Adina Mitchell, then Adina Mitchell is entitled to have the proposed deficiency against her reduced by the Estate Tax paid on the notes and monies included in the Estate Tax Return as corpus of the Estate of John W. Mitchell, now deceased.

Respectfully submitted, [137]

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Los Angeles, California

LLEWELLYN A. LUCE

937 Munsey Building

Washington, D. C.

Counsel for petitioners [138]

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[Title of Court and Cause.—Docket Nos. 47516,  
66584, 70861.

MEMORANDUM AND ORDER.

These consolidated proceedings come before us now upon motion by petitioner for rehearing or for

reconsideration of our opinion promulgated herein December 28, 1934.

Petitioner contends that our opinion is in error in its conclusion; that, with respect to the properties held in trust by the Title Guaranty and Trust Company for John W. Mitchell and his wife, a joint tenancy with right of survivorship existed in those parties. It is argued that the rule recognized by the California Courts, under the statutes of that state, preserves the essential requirements of the common law in reference to such an estate, namely, the unities of interest, title, time and possession. It is insisted that these four unities did not exist as to John W. Mitchell and his wife in the properties involved. We have given careful consideration to the argument of counsel for the [139] petitioner and to the brief submitted, including the authorities cited, and, after due consideration, are not satisfied that the rule urged would be applied by the Courts of California to the present facts. In addition to this, it would appear that the record in these proceedings establishes the existence of the four unities included in that rule. It seems the fact has been overlooked that conveyance of the legal title to the properties, formerly held by Mitchell and his wife as their separate properties, or as parts of the community, was made to a third party, the trustee. Even in those jurisdictions which recognize the strict common law rule it is held that the requirements of that rule are met by a conveyance to a third party and a reconveyance in joint tenancy by the latter. In a convey-

ance of that character to a third party it is apparent that such party holds it only in trust for purposes of reconveyance, yet the requirements of the rule are met. The rule is one of law and applies to the legal title. Here the parties have conveyed the legal titles to the properties to a trustee. The reconveyance of these titles in joint tenancy by that trustee satisfied the common law rule. The holding of such equitable title or beneficial interest to the properties, by Mitchell and his wife, in joint tenancy with right of survivorship, as provided by the declaration of trust, was therefore a joint tenancy.

Petitioner contends that certain of the proceeds from these properties, held in the opinion questioned here, to represent income to the taxpayers, was returned as corpus of the estate of John W. Mitchell, and estate tax paid thereon and, that there is, accordingly, a credit due for such payment. In answer, it need only be said that, in this proceeding, we have jurisdiction only to determine the correct tax liability of the estates of John W. and Adina Mitchell [140] for income taxes for the years involved. The case of Ernest W. Bull, Executor v. United States, ..... U.S. ...., decided April 29, 1935, upon which petitioner relies on this point, is readily distinguishable on the facts and issues presented. If overpayment of estate taxes has been made upon the basis of the return filed for the estate of John W. Mitchell, it is a matter for correction and refund, by a proceeding brought for that purpose, if not barred under applicable statutes.

In view of our conclusion above stated, it is hereby ORDERED that petitioner's motion for rehearing or reconsideration be and the same is hereby denied.

Dated: Washington, D. C.

July 9, 1935.

[Seal] [Signed] J. RRUSSELL LEECH  
Member. [141]

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United States Board of Tax Appeals

Docket No. 47516

DOUGLAS L. EDMONDS, Administrator,  
ESTATE OF JOHN W. MITCHELL,  
Deceased,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket Nos. 66584, 70861

DOUGLAS L. EDMONDS, Administrator,  
ESTATE OF ADINA MITCHELL,  
Deceased,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Respondent having, under Rule 60, filed a notice of settlement of the tax liabilities of the petitioners

in these consolidated proceedings as in accord with the Findings of Fact and Opinion of the Board, promulgated December 28, 1934, and said notice of settlement having come on in due course for hearing July 24, 1935, at Washington, D. C. and petitioner having failed to contest the correctness of the proposed redetermination of the deficiency as computed by respondent and the same appearing to be in accord with the Opinion of the Board and correct, it is

ORDERED AND DECIDED that under Docket No. 47516, Douglas L. Edmonds, Administrator of the Estate of John W. Mitchell, deceased, there is a deficiency for the calendar year 1924 of \$4,048.04, and for the period January 1 to July 2, 1925, a deficiency of \$10,241.86; that under Docket No. 66584, Douglas L. Edmonds, Administrator of the Estate of Adina Mitchell, deceased, [142] there is for the year 1926 a deficiency of \$5,032.09 and penalty of \$1,258.02; for the calendar year 1927 there is a deficiency of \$3,452.89 and penalty of \$863.22 and for the calendar year 1928 a deficiency of \$4,420.80 and penalty of \$1,105.20; under Docket No. 70861, Douglas L. Edmonds, Administrator, de Bonis non, Estate of Adina Mitchell, deceased, there is for the calendar year 1925, a deficiency of \$15,084.08 and penalty of \$3,771.02.

Enter:

[Seal]

[Signed] J. RUSSELL LEECH  
Member.

[Endorsed]: Entered: Jul 29 1935. [143]

[Title of Court and Cause.—Docket Nos. 66584,  
70861.]

STIPULATION AS TO VENUE.

It is hereby stipulated and agreed by and between the parties to the above entitled proceeding, through their respective counsel of record, that the decision of the United States Board of Tax Appeals, rendered and entered on the 29th day of July, 1935 in the above entitled cases, may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit.

This stipulation as to venue is executed pursuant to the provisions of Section 519 of the Revenue Act of 1934, amending Section 1002 of the Revenue Act of 1926.

LLEWELLYN A. LUCE

937 Munsey Building

Washington, D. C.

Counsel for Petitioner

FRANK J. WIDEMAN

Assistant Attorney General

Counsel for Respondent

[Endorsed]: Filed Oct. 18, 1935. [144]

[Title of Court and Cause.—Docket Nos. 47516, 66584, 70861.]

PETITION FOR REVIEW TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now Douglas L. Edmonds, Administrator of the Estates of John W. Mitchell, deceased, and Adina Mitchell, deceased, by his attorneys, Claude I. Parker, Ralph W. Smith and Llewellyn A. Luce and respectfully shows:

I.

The petitioner on review (hereinafter referred to as the [145] petitioner) is the duly appointed, qualified and acting administrator of the Estate of John W. Mitchell, deceased, and of the Estate of Adina Mitchell, deceased. The petitioner resides in Los Angeles, California, and maintains a business address at 808 Bank of America Building in that City. The respondent on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

The decedent, John W. Mitchell, died on July 2, 1925, and his wife, Adina Mitchell, was duly appointed and qualified as the executrix of his estate. Adina Mitchell died, a resident of the County of San Diego, State of California, on the 20th day of April, 1931. Thereafter the petitioner was duly appointed administrator de bonis non of the Estate of John



W. Mitchell, deceased, and of the Estate of Adina Mitchell, deceased.

After the death of John W. Mitchell, Adina Mitchell, as executrix of the said decedent's estate, duly filed a Federal income tax return for the decedent for the period January 1st, 1925 to July 2, 1925. Adina Mitchell, as executrix of her deceased husband's estate, filed Federal income tax returns for the Estate of John W. Mitchell, deceased, for the period July 2, 1925 to January 1st, 1926, and for the calendar years 1926, 1927 and 1928. All of said returns were filed by the executrix, Adina Mitchell with the U. S. Collector of Internal Revenue for the Sixth District of California. The office of said Collector is located at Los Angeles, California, within the judicial circuit of the United States Circuit Court of Appeals for the Ninth *District*. [146]

Adina Mitchell did not herself file a separate individual Federal income tax return for the years 1925, 1926, 1927 and 1928. During 1930, without her knowledge or consent so-called delinquent returns for the period July 2, 1925 to January 1st, 1926 and for the years 1926 and 1927 were prepared for Adina Mitchell by a Deputy Collector of Internal Revenue, signed by him for her, and filed with the said Collector of Internal Revenue for the Sixth District of California at Los Angeles, California, on February 7, 1930. For the year 1928, without the knowledge or consent of Adina Mitchell a so-called delinquent return was prepared for her by a Deputy Collector of Internal Revenue, signed for her by him and filed with the Collector of Internal Revenue for the Sixth District of California on November 4, 1930.

It has been stipulated by and between the parties to this proceeding through their respective counsel of record, that the decision of the United States Board of Tax Appeals rendered and entered on July 29, 1935, under Board of Tax Appeals Docket Nos. 66584 and 70861 (involving the period from July 2, 1925 to January 1st, 1926 and the years 1926, 1927 and 1928) may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit.

## II.

The Commissioner determined a deficiency in Federal income tax against the decedent, John W. Mitchell, in the amount of \$11,270.77 for the period from January 1, 1925 to July 2, 1925, and on December 20, 1929, mailed, by registered mail, a notice of said deficiency to Adina Mitchell, executrix of the Estate of John [147] W. Mitchell. Thereafter the executrix duly filed with the United States Board of Tax Appeals, within sixty days from the date of said notice of deficiency, her petition appealing from said notice of deficiency. The appeal was given Docket No. 47516 by the Board and the Commissioner duly filed his answer. Thereafter Adina Mitchell died and this petitioner by agreement of the parties was substituted as party petitioner.

The Commissioner determined the following deficiencies and penalties against Adina Mitchell individually:

For the period July 2, 1925 to January 1, 1926, \$5,669.58 with a penalty of \$1,417.39; year 1926,

\$4,095.80, with a penalty of \$1,023.95; year 1927, \$3,623.49, with a penalty of \$905.87; year 1928, \$4,551.08, with a penalty of \$1,137.33.

On April 16, 1932, the Commissioner sent to Adina Mitchell by registered mail, a notice of said deficiencies. Adina Mitchell had died on April 20, 1931. The petitioner, as administrator of her estate, duly filed with the United States Board of Tax Appeals, within sixty days from the date of the notice of deficiency, his petition appealing from said notice of deficiency. The appeal was given Docket No. 66584 and an answer was duly filed by the Commissioner.

The Commissioner further determined a deficiency of \$17,600.17 with a penalty of \$4,400.04 against the decedent, Adina Mitchell, for the year 1925. Said deficiency included the deficiency of \$5,669.58 for the period from July 2, 1925 to January 1, 1926, and penalty of \$1,417.39 which had theretofore been proposed against [148] Adina Mitchell in the Commissioner's notice of deficiency, dated April 6, 1932 under Board of Tax Appeals Docket No. 66584. The Commissioner, by registered mail, under date of February 4, 1933, sent to the Estate of Adina Mitchell, a notice of the deficiency of \$17,600.17, with penalty of \$4,400.04 for the year 1925. Thereafter the petitioner duly filed with the United States Board of Tax Appeals within sixty days from the date of the notice of deficiency, his petition appealing from said notice of deficiency. The appeal was given Docket No. 70861 by the Board and the Commissioner thereafter filed his answer.

The three appeals bearing Board of Tax Appeals Docket Nos. 47516, 66584 and 70861 were by agreement of the parties consolidated for hearing and decision and came on for hearing before the Board in Long Beach, California, on the 2nd day of October, 1933.

On December 28, 1934, after the hearing of said appeals, the United States Board of Tax Appeals promulgated its findings of fact and opinion and on July 29, 1935, the said Board entered its final decision and order of redetermination in said appeals, wherein and whereby said Board ordered and decided as follows:

“That under Docket No. 47516, Douglas L. Edmonds, Administrator of the Estate of John W. Mitchell, deceased, there is a deficiency for the calendar year 1924 of \$4,048.04, and for the period January 1 to July 2, 1925, a deficiency of \$10,241.85; that under Docket No. 66584, Douglas L. Edmonds, Administrator of the Estate of Adina Mitchell, deceased, there is for the year 1926 a deficiency of [149] \$5,032.09 and penalty of \$1,258.02; for the calendar year 1927 there is a deficiency of \$3,452.89 and penalty of \$863.22 and for the calendar year 1928 a deficiency of \$4,420.80 and penalty of \$1,105.20; under Docket No. 70861, Douglas L. Edmonds, Administrator, de bonis non, Estate of Adina Mitchell, deceased, there is for the calendar year 1925, a deficiency of \$15,084.08 and penalty of \$3,771.02.”

## III.

The deficiencies involved arose and resulted principally from the determination of the Commissioner that on the date of the death of John W. Mitchell, July 2, 1925, the decedent and his wife, Adina Mitchell, held certain real and personal property as joint tenants. The Commissioner determined that for the period from January 1, 1925 to July 2, 1925, one-half of the income from said real and personal properties was taxable to Adina Mitchell as a joint tenant. The Commissioner further determined that the entire income from said properties was taxable to Adina Mitchell, as surviving joint tenant for the period from July 2, 1925 (date of death of John W. Mitchell) to January 1, 1926 and for the years 1926, 1927 and 1928.

John W. Mitchell and Adina Mitchell were married in Los Angeles, California, during the year 1888. By the year 1921 Mr. Mitchell had acquired several parcels of real property which were, during the years 1921 and 1922 conveyed by Mr. Mitchell in trust, to the Title Guarantee and Trust Company of Los Angeles, California, as security for loans to Mr. Mitchell to pay his indebted- [150] ness to the Pacific Southwest Trust and Savings Bank of Los Angeles, California, which bank had loaned Mr. Mitchell large sums of money prior to the year 1921.

In the year 1923 Mr. Mitchell authorized the Title Guarantee and Trust Company to sell all of the Cahuenga acreage, title to which was conveyed to F. A. Hartwell in two separate parcels, the first of 115

acres in consideration of the sum of \$345,000.00, of which \$50,000.00 was paid in cash with a note for \$295,000.00, secured by a deed of trust, evidencing the balance; and the second parcel of 20 acres in consideration of the sum of \$110,000.00, of which \$20,000.00 was paid in cash with a note for \$9,000.00, secured by a deed of trust evidencing the balance. Each of these notes was payable to John W. Mitchell.

The Los Angeles Stone Company also purchased a parcel of real estate for which it gave its note, payable to John W. Mitchell.

As of April 1, 1924, the Title Guarantee and Trust Company held title to all of the real estate previously conveyed to it in trust, except the parcels conveyed to F. A. Hartwell and the Los Angeles Stone Company. Also, as of April 1, 1924, the Title Guarantee and Trust Company held the two notes from Hartwell (payable to John W. Mitchell) and the note from the Los Angeles Stone Company (payable to John W. Mitchell) as security for loans made by the Title Guarantee and Trust Company to John W. Mitchell.

On April 1, 1924, the Title Guarantee and Trust Company issued a Declaration of Trust, numbered 822-B, declaring that it held certain assets in trust for John W. Mitchell and his wife as [151] joint tenants, with right of survivorship, and confirming and reasserting the assignment to the Title Guarantee and Trust Company of the notes of the Hartwell and Los Angeles Stone Company, as security

for the indebtedness of John W. Mitchell to said Title Guarantee and Trust Company.

Upon the death of John W. Mitchell on July 2, 1925, Adina Mitchell was duly appointed executrix of his estate. She filed a Federal Estate tax return for the Estate of John W. Mitchell and included therein as part of the corpus of said estate, subject to Federal Estate tax, the notes of Mr. Hartwell, payable to John W. Mitchell, the note of the Los Angeles Stone Company, and the value of the real estate held in trust by the Title Guarantee and Trust Company. There was some disagreement between the Commissioner and the executrix as to the amount of estate tax due from the estate of John W. Mitchell; an appeal was taken to the United States Board of Tax Appeals by the executrix, and the matter was finally closed by decision of the Board pursuant to a stipulation executed by the Commissioner and the executrix.

The executrix duly filed a Federal income tax return for the decedent, John W. Mitchell, for the period January 1 to July 2, 1925. The executrix also duly filed a Federal income tax return for the estate of John W. Mitchell for the period from July 2, 1925 to January 1, 1926, and for the calendar years 1926, 1927 and 1928.

The executrix, Adina Mitchell, did not file a personal income tax return for herself for the period July 2, 1925 to January 1, 1926, or for the years 1926, 1927 and 1928. She regarded the income from [152] the real and personal property held in trust

by the Title Guarantee and Trust Company as the income of the Estate of John W. Mitchell, deceased, and did not regard any of such income as her individual property or income.

Without the knowledge or consent of Adina Mitchell, a Deputy Collector at Los Angeles, California, prepared and signed so-called delinquent returns for Adina Mitchell for the period July 2, 1925 to January 1, 1926 and for the years 1926, 1927 and 1928.

The Commissioner approved the said delinquent returns filed by said Deputy Collector and determined that for the period from January 1 to July 2, 1925, one-half of the income from the real and personal property held in trust by the Title Guarantee & Trust Company constituted the individual taxable income of Adina Mitchell.

The Commissioner further determined that for the period from July 2, 1925 to January 1, 1926, and for the calendar years 1926, 1927 and 1928, all of the income from the real and personal property held in trust by the Title Guarantee & Trust Company constituted the individual income of Adina Mitchell and not the income of the estate of John W. Mitchell.

The Commissioner further determined that the payments during the years 1925, 1926, 1927 and 1928 on the principal of the Hartwell and Los Angeles Stone Company notes constituted income to Adina Mitchell even though the principal of said notes had been included as corpus of the estate of John



W. Mitchell, deceased, in the Federal estate tax return of the said estate and Federal estate tax paid thereon by the estate with the approval of said Commission- [153] er. The Commissioner based his determination upon the ground that the Declaration of Trust issued on April 1, 1924, by the Title Guarantee & Trust Company of Los Angeles, California, created a joint tenancy and that the entire income from the properties held in trust by said Title Guarantee & Trust Company was taxable to Adina Mitchell as surviving joint tenant.

The Commissioner further determined that penalties of 25 per cent of the deficiencies proposed should be assessed against Adina Mitchell for the period from July 2, 1925 to January 1, 1926, and for the years 1926, 1927 and 1928, because of her failure to file individual income tax returns for said years, even though she had, as executrix, filed an estate income tax return for all of said years on the theory that the entire income from the properties in question constituted the income of the estate of John W. Mitchell, deceased, and not the individual income of Adina Mitchell.

The petitioner on Review contended before the Board as follows:

1. That as of July 2, 1925, the real estate and personal property held in trust by the Title Guarantee & Trust Company of Los Angeles, California, was the individual property of John W. Mitchell.

2. That the income from said real and personal property was taxable to John W. Mitchell individually for the period January 1, 1925 to July 2,

1925, and further that the income from said property, both real and personal, after the date of John W. Mitchell's death on July 2, 1925, was taxable income to the estate [154] of John W. Mitchell, as reported in the Federal income tax returns of said estate for the period from July 2, 1925 to January 1, 1926 and the years 1926, 1927 and 1928.

3. That the real and personal property held in trust by the Title Guarantee & Trust Company of Los Angeles, California, as of July 2, 1925, was not joint tenancy property.

4. That the income from said real and personal property for the period from January 1, 1925 to July 2, 1925, was not taxable in equal shares to John W. Mitchell and Adina Mitchell as joint tenants.

5. That the income from said property, both real and personal, was not taxable to Adina Mitchell individually for the period from July 2, 1925 to January 1, 1926 and for the years 1926, 1927 and 1928, inasmuch as Adina Mitchell was not a surviving joint tenant.

6. That the Declaration of Trust issued by the Title Guarantee & Trust Company on April 1, 1924, designated as No. 822-B, did not create a joint tenancy and that the Commissioner erred in determining that said Declaration of Trust was sufficient to create a joint tenancy.

7. That in any event by the clear and unambiguous language of said Declaration of Trust, dated April 1, 1924, the personal property consisting of the Hartwell notes and the note of the Los Angeles

Stone Company, was pledged as security for the personal debts of John W. Mitchell and was not placed in joint tenancy by said Declaration of Trust and further that said Declaration of Trust [155] was insufficient to create a joint tenancy in the said personal property consisting of the Hartwell notes and the Los Angeles Stone Company note.

8. That the payments on the principal of the Hartwell and Los Angeles Stone Company notes constituted a return of capital and not income to the decedent, Adina Mitchell.

9. That the principal and any accrued interest on the Hartlett notes and Los Angeles Stone Company note constituted corpus of the estate of John W. Mitchell; had been returned in the Federal estate tax return of the estate of John W. Mitchell, deceased, and could not be both corpus of the estate of John W. Mitchell and income to the decedent, Adina Mitchell.

10. That if a payment on the principal of said notes constituted income to the decedent, Adina Mitchell, then, certainly, said notes were not a part of the corpus of the estate of John W. Mitchell and the estate tax paid on said notes as part of the corpus of the estate of John W. Mitchell should be offset against the income tax deficiencies proposed against the decedent, Adina Mitchell, for the period July 2, 1925 to January 1st, 1926 and the years 1926, 1927 and 1928.

11. That any profit derived from the sale of any of the real or personal property held in trust by the

Title Guarantee & Trust Company of Los Angeles should be measured by the fair market value of said property as of July 2, 1925, the date of the death of John W. Mitchell; that the respondent erred in attempting to [156] use as the cost basis to Adina Mitchell the March 1, 1913, value of the property sold by the Title Guarantee & Trust Company rather than the value of such property as of July 2, 1925; that the decedent, Adina Mitchell, did not derive any taxable income from the Hartwell and Los Angeles Stone Company notes until such a time as the income from said notes exceeded the fair market value of said notes on the date of the death of the decedent, John W. Mitchell.

12. That the assessment of any deficiency against the petitioner was barred by the statute of limitations and that respondent erred in attempting to assess penalties against the decedent, Adina Mitchell, for failure to return the income here in question in a separate individual return when she had already returned such income in the Federal income tax return filed by her for the estate of John W. Mitchell, deceased, for the period July 2, 1925 to January 1, 1926, and the years 1926, 1927 and 1928.

13. That the petitioner and the Commissioner having agreed that the real and personal property held in trust by the Title Guarantee & Trust Company as of July 2, 1925, constituted corpus of the estate of John W. Mitchell and the Board having rendered a decision under Docket No. 36231 reflecting this agreement, the question is *res adjudicata*,

and the Commissioner is estopped from taxing payments on the principal sums of said properties as income to Adina Mitchell.

The United States Board of Tax Appeals sustained the determination of the Commissioner and decided each of the aforementioned [157] contentions against the petitioner.

#### IV.

The petitioner being aggrieved by the said decision and final order of said United States Board of Tax Appeals, desires a review thereof in accordance with the provisions of the Revenue Acts of 1926 and 1928, as amended by the Revenue Act of 1934, by the United States Circuit Court of Appeals for the Ninth Circuit, within which Circuit is located the office of the Collector of Internal Revenue with whom the income tax returns here involved were filed.

#### V.

Petitioner says that in the record and proceedings before the United States Board of Tax Appeals and in the decision and final order of redetermination rendered and entered by the said United States Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the petitioner, and petitioner assigns the following errors and each of them which he avers occurred in said record, proceedings, decision and final order of redetermination and upon which he relies to reverse the said decision and final order of redetermination so rendered and

entered by the said United States Board of Tax Appeals, to-wit:

1. The Board of Tax Appeals erred in holding that as of July 2, 1925, the real and personal property held in trust by the Title Guarantee & Trust Company of Los Angeles, California, was joint tenancy property rather than the individual property of the decedent, John W. Mitchell. [158]

2. The Board of Tax Appeals erred in holding and deciding that the income from the real and personal property held in trust by the Title Guarantee & Trust Company of Los Angeles, California, was taxable to the decedent, Adina Mitchell, as surviving joint tenant for the period from July 2, 1925 to January 1, 1926 and the years 1926, 1927 and 1928.

3. The Board of Tax Appeals erred in holding and deciding that the Declaration of Trust issued by the Title Guarantee & Trust Company of Los Angeles, California, on April 1, 1924, designated as No. 822-B was under the laws of the State of California sufficient to create a joint tenancy with right of survivorship.

4. The Board of Tax Appeals erred by failing to hold and decide that said Declaration of Trust issued by the Title Guarantee & Trust Company on April 1, 1924, was insufficient to create a joint tenancy with respect to the real and personal property held in trust by said Title Guarantee & Trust Company.

5. The Board of Tax Appeals erred in any event by failing to hold and decide that the said Decla-

ration of Trust issued on April 1, 1924, was insufficient to create a joint tenancy with right of survivorship in the Hartwell and Los Angeles Stone Company notes which were definitely pledged with the said Trust Company to secure the individual indebtedness of the decedent, John W. Mitchell.

6. The Board of Tax Appeals erred in failing to hold and decide that the income from the real and personal property held in trust by the Title Guarantee & Trust Company constituted a return of capital to the decedent, Adina Mitchell, for the period July 2, 1925 to January 1, 1926, and the years 1926, 1927 and 1928, rather [159] than income taxable to said decedent.

7. The Board of Tax Appeals erred by failing to hold and decide that the cost basis of the real estate sold after July 2, 1925, by the Title Guarantee & Trust Company was the fair market value thereof as of July 2, 1925, rather than March 1, 1913.

8. The Board of Tax Appeals erred by failing to hold and decide that the income from the real and personal property held in trust by the Title Guarantee & Trust Company was income taxable to the estate of John W. Mitchell, deceased, for the period from July 2, 1925 to January 1, 1926, and for the years 1926, 1927 and 1928.

9. The Board of Tax Appeals erred by failing to hold and decide that the Hartwell and Los Angeles Stone Company notes constituted a portion of the corpus of the estate of John W. Mitchell, deceased,

and accordingly that payments thereon were not taxable as income to the decedent, Adina Mitchell, for the years 1925, 1926, 1927 and 1928.

10. The Board of Tax Appeals erred by, in effect, holding and deciding that the principal of the Hartwell and Los Angeles Stone Company notes constituted both corpus of the estate of John W. Mitchell, deceased, and taxable income to the decedent, Adina Mitchell, when payments were made thereon during the years 1925, 1926, 1927 and 1928.

11. The Board of Tax Appeals in any event erred by holding and deciding that the Federal estate tax paid on the principal of the Hartwell and Los Angeles Stone Company notes by the estate of [160] John W. Mitchell should not be set off against the income tax deficiency proposed against Adina Mitchell for the years here under review.

12. The Board of Tax Appeals erred in failing to hold and decide that the deficiencies proposed for assessment against the petitioner for all the taxable periods and years here involved were barred by the statute of limitations under the Revenue Acts of 1926 and 1928.

13. The Board of Tax Appeals erred in holding and deciding that penalties should be assessed against Adina Mitchell for her failure to file a separate individual income tax return for the period from July 2, 1925 to January 1, 1926 and the years 1926, 1927 and 1928.

14. The Board of Tax Appeals erred by failing to hold and decide that inasmuch as the income here



involved had been reported in the estate tax returns of the Estate of John W. Mitchell, deceased, filed by Adina Mitchell as executrix, no penalty should be assessed against Adina Mitchell individually for failure to report said income in the individual income tax return filed by her.

15. The Board of Tax Appeals erred by failing to hold and decide that the respondent erred in attempting to exact a second income tax from Adina Mitchell individually on income which had theretofore been reported by her as executrix of the estate of John W. Mitchell, deceased, and Federal income tax paid thereon.

16. The Board of Tax Appeals erred by, in effect, holding that the respondent could accept three separate taxes on the same [161] property, that is, the Federal estate tax, on the theory that the real and personal property here involved was corpus of the estate of John W. Mitchell; an income tax paid by the estate of said John W. Mitchell, on the income from said property and a tax from Adina Mitchell individually on income reported by her as executrix in the Federal tax returns of the estate of John W. Mitchell.

17. The Board of Tax Appeals erred by failing to hold and decide that the March 1, 1913, value of the Santa Monica Beach property sold by John W. Mitchell prior to his death was \$97,338.20 rather than \$14,521.39. The March 1, 1913, value of said property was incorrectly stated in the stipulation of facts filed with the Board and the attention of the Board and respondent's representatives was called

to this fact in the brief filed before the Board by petitioner on review.

18. The Board of Tax Appeals erred in holding and deciding that one-half of the income from the property held in trust by the Title Guarantee & Trust Company was taxable to the decedent, Adina Mitchell, for the period January 1, 1925 to July 2, 1925, under the theory that said property was held by John W. Mitchell and his wife, Adina Mitchell, as joint tenants during said period.

19. The Board of Tax Appeals erred in any event by determining penalties against the petitioner as administrator of the estate of Adina Mitchell, deceased, inasmuch as any possible right of respondent to such penalties passed with the death of said Adina Mitchell.

20. The Board of Tax Appeals erred by failing to hold and [162] decide that inasmuch as the respondent and petitioner had agreed that the real and personal property here involved constituted corpus of the Estate of John W. Mitchell, deceased, and the Board having reflected such agreement in a decision under Docket No. 36231, the question is *res adjudicata*, and the Commissioner is estopped from claiming that payments on the principal of said properties is taxable as income to the decedent, Adina Mitchell.

21. The Board of Tax Appeals erred in not re-determining the deficiencies herein involved in favor of the petitioner against the Commissioner.

WHEREFORE, the petitioner prays that the decision of the United States Board of Tax Appeals entered herein against him be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit and that a transcript of the record be prepared in accordance with the law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

CLAUDE I. PARKER

RALPH W. SMITH

DOUGLAS L. EDMONDS

808 Bank of America Building  
Los Angeles California

LLEWELLYN A. LUCE

937 Munsey Building  
Washington, D. C.

Counsel for Petitioner on  
Review.

[163]

City of Washington,  
District of Columbia.

LLEWELLYN A. LUCE, being first duly sworn,  
says:

That he is one of the attorneys of record for the above named petitioner and as such is duly authorized to verify the above and foregoing petition for review to the United States Circuit Court of Appeals for the Ninth Circuit; that he has read said petition for review and is familiar with the state-

ments therein contained and that the facts therein stated are true, except such facts as may be stated to be on information and those facts he believes to be true.

LLEWELLYN A. LUCE

Subscribed and sworn to before me this 18th day of October, 1935.

(Signed) ELSIE P. DAMERON

Notary Public

[Endorsed]: Filed Oct. 18, 1936. [164]

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[Title of Court and Cause.—Docket Nos. 47516, 66584, 70861.]

NOTICE.

TO:

Hon. Robert H. Jackson,  
Assistant General Counsel,  
Bureau of Internal Revenue,  
Washington, D. C.

Counsel for Respondent on Review.

Notice is hereby given you that Douglas L. Edmonds, Administrator of the Estate of John W. Mitchell, Deceased, and Administrator of the Estate of Adina Mitchell, Deceased, petitioner on review in the above entitled proceedings, did on the 18th day of October, A. D., 1935, file with the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the deci-

sion rendered by said Board of Tax Appeals [165] in said proceeding, a copy of which said petition for review, as filed, is herewith served upon you.

LLEWELLYN A. LUCE,

Counsel for Petitioner on Review

Service of the foregoing Notice and of a copy of the petition for review mentioned in said Notice is acknowledged this 18th day of October, A. D., 1935.

ROBERT H. JACKSON,

Counsel for Respondent on Review. [166]

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[Title of Court and Cause.—Docket Nos. 47516, 66584, 70861.]

PRAECIPE.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit heretofore filed by the petitioner on review:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board, including—
  - (a) Petition under Docket 47516, including annexed copy of the Commissioner's notice of deficiency.
  - (b) Answer filed by Respondent in Docket 47516.
  - (c) Petition filed with the Board under Docket 66584. [167]
  - (d) Respondent's answer and amended answer filed under Docket 66584.
  - (e) Petitioner's reply to Respondent's amended answer filed under Docket 66584.
  - (f) Petition filed with the Board under Docket 70861.
  - (g) Answer filed by Respondent under Docket 70861.

3. Stipulation of facts, with Exhibits A, B, C, D, E and F, attached thereto, filed with the Board at the date of the hearing of this cause on October 2, 1933.

4. Copy of letter dated October 10, 1933, signed by Ralph W. Smith and addressed to F. E. Collins, representative Special Advisory Committee of the Commissioner's office at Los Angeles, California; also copy of letter dated October 20, 1933, from said F. E. Collins to said Ralph W. Smith. Said documents were attached to petitioner's brief, filed with the Board on January 10, 1934.

5. Opinion of the Board promulgated December 28, 1934.

6. Commissioner's Notice of Settlement, filed with the Board on January 29, 1935.

7. Motion for Reconsideration and Rehearing, filed by Petitioner on May 20, 1935.

8. Memorandum and Order of the Board entered July 9, 1935.

9. Decision and final Order of the Board entered July 29, 1935.

10. Stipulation as to venue filed with the Board on October 18, 1935.

11. Notice of filing Petition for review filed with the Board on October 18, 1935.

12. Petition for review filed October 18, 1935.

13. This Praecipe. [168]

CLAUDE I. PARKER

RALPH W. SMITH

DOUGLAS L. EDMONDS

808 Bank of America Bldg.,

Los Angeles, California.

LLEWELLYN A. LUCE,

937 Munsey Building,

Washington, D. C.

Counsel for Petitioner on  
Review.

Service of a copy of the within Praecipe is hereby admitted this 8th day of January, 1936.

HERMAN OLIPHANT,

General Counsel for the Department of the Treasury.

[Endorsed]: Filed Jan. 8, 1936. [169]

[Title of Court and Cause.—Docket Uos. 47516,  
66584, 70861.]

## CERTIFICATE

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 169, inclusive contain and are a true copy of the transcript of record papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 6th day of February, 1936.

[Seal]

B. D. GAMBLE,

Clerk, United States Board of Tax Appeals.

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[Endorsed]: No. 8129. United States Circuit Court of Appeals for the Ninth Circuit. Douglas L. Edmonds, Administrator, Estate of John W. Mitchell, Deceased, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Douglas L. Edmonds, Administrator, Estate of Adina Mitchell, Deceased, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed February 17, 1936.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.